

**DYING TO COMPETE: HOW THE OPEN-WATER
SWIMMING SAFETY ACT CAN PROTECT ATHLETES,
HONOR FRAN CRIPPEN'S LEGACY, AND RESHAPE
OPEN-WATER SWIMMING BEFORE THE 2028 OLYMPICS**

*Michelle Lebed**

ABSTRACT

Open-water swimming, though an Olympic event since 2008, has never been safe. In light of the Olympics returning to the United States for the first time in over three decades, USA Swimming has the opportunity to set a new global precedent: one where the safety of athletes takes priority over elite competition. This Note argues that current safety regulations in open-water swimming are inadequate and that governing bodies like USA Swimming and World Aquatics have failed to implement meaningful safeguards despite overwhelming evidence of preventable risks.

The death of Fran Crippen in 2010 during an open-water event exposed these systemic failures, yet more than a decade later, open-water swimmers still compete without enforceable protections against extreme water temperatures, unsafe starting conditions, and insufficient athlete monitoring. To address these urgent concerns, this Note proposes the Open-Water Swimming Safety Act, a federal act requiring USA Swimming to adopt mandatory safety reforms. The Act establishes stricter water temperature limits, rolling starts for large races, and real-time GPS-enabled biometric tracking for athlete monitoring.

* J.D. Candidate, 2026, Drexel University Thomas R. Kline School of Law; B.B.A., 2023, Loyola University Maryland. I am deeply grateful to Pete, Pat, Maddy, Claire, and Teresa Crippen for allowing me to share Fran's story, and for their unwavering support throughout this process. Thank you to Professor Kevin Oates and Professor Aimee Kahan for their invaluable guidance and feedback during every stage of writing. Thank you to the *Drexel Law Review* members and Executive Board for all of their thoughtful editing and assistance in finalizing this Note—especially Jenna Kurtz, whose suggestions strengthened my drafts and encouraged me throughout. Finally, thank you to my family and friends for their constant encouragement, and a special thank you to Larisa Lebed, who inspired me to pursue a topic I am truly passionate about.

By shifting from reactive crisis management to proactive safety enforcement, the Act ensures that no swimmer is forced to choose between competition and survival. The 2028 Olympics provides a perfect opportunity to implement these protections, ensuring that Fran Crippen's legacy is one of lasting reform, not repeated failure.

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INTRODUCTION

Francis (“Fran”) Crippen,¹ a former professional open-water swimmer, could not have known that his journey to Fujairah, United Arab Emirates (“UAE”), in October of 2010, for a 10K marathon swimming race would be his last race ever.² The UAE hosted the eighth and final race of the 2010 Fédération Internationale de Natation (“FINA”) 10K Marathon Swimming World Cup.³ Eighty-two swimmers, both men and women, competed in this grueling 10K open-water swimming race.⁴ Eighty-one

1. Fran was my swim coach when I swam at Germantown Academy in elementary and middle school. He coached the younger group that I was a part of starting in the summer of 2008 to October 2010. Despite just being my age group coach from the ages of 7 to 9 years old, Fran was my role model and my friend. Every afternoon practice he coached, I would rush after school was over and hang out with him in the pool office until it was time for my practice. Additionally, my brother and I had private swim lessons with Fran every Sunday morning. Fran only coached for this one-time span, and among the group of swimmers that he coached, I am the last person (due to my proximity to him and my age when he coached me) that has the platform to write a law review Note on him. Fran was an integral part of my swimming career and my life. He was the reason I strived to be a butterfly for my entire career, and he was the reason I pushed myself to swim in college, despite almost quitting my second semester my senior year of high school. Fran wrote me a note before he left for his race in Dubai that still hangs in my room today. The note says, “Michelle, you’re the best, dream big, Francis Crippen, USA, :-).” Fran touched my life in a way that I will be forever grateful for. This Note is my homage to him.

2. Aina Hunter, *Swimmer Dies in 10-K Race: What Really Killed Fran Crippen?*, CBS NEWS (Oct. 25, 2010, at 16:55 ET), <https://www.cbsnews.com/news/swimmer-dies-in-10-k-race-what-really-killed-fran-crippen/> [https://perma.cc/YP7N-S5PT]; see John T. Wendt & John J. Miller, *Tragedy at Fujairah: Risk Management and Legal Issues on the Death of Fran Crippen*, 12 U. DENV. SPORTS & ENT. L.J. 71, 98 (2012) (discussing how Fujairah was a disaster waiting to happen, and it did not result in any changes).

3. *FINA 10km Marathon Swimming World Cup*, WORLD AQUATICS, <https://www.worldaquatics.com/competitions/551/fina-10km-marathon-swimming-world-cup-2010> [https://perma.cc/L2JM-2FDD] (last visited Oct. 19, 2025).

4. Anna Zacharias, *Swim Chief Defends Safety Measures*, NAT’L NEWS (Oct. 26, 2010), <https://www.thenationalnews.com/uae/swim-chief-defends-safety-measures-1.532085> [https://perma.cc/X9VS-UMQX]; *FINA 10km Marathon Swimming World Cup*, *supra* note 3.

swimmers finished the race; Fran Crippen was not one of them.⁵ Fran Crippen died in this 10K Marathon swimming race from heat-related causes and aggravated environmental conditions.⁶ Fran's death should have been a cornerstone in the open-water swimming community, reinforcing the principle that "an athlete should never lose his or her life in a sport competition."⁷

Today, fifteen years after his tragic death on October 23, 2010, Fran Crippen remains the most famous name in open-water swimming—not for his victories, but as a haunting symbol of open-water swimming's unresolved safety issues.⁸ Despite this tragedy, meaningful safety reforms have been slow, but the pressure remains on USA Swimming—the governing body responsible for overseeing American open-water swimmers—to prevent another loss.⁹

A native of Conshohocken, Pennsylvania and a graduate of the University of Virginia, Fran was more than just an outstanding swimmer.¹⁰ He was a tremendous person, coach, mentor,

5. Hunter, *supra* note 2; Zacharias, *supra* note 4.

6. *FINA Is Still in Hot Water Over the Death of Fran Crippen*, SWIMMING WORLD (June 3, 2012, at 11:15 ET), <https://www.swimmingworldmagazine.com/news/fina-is-still-in-hot-water-over-the-death-of-fran-crippen/> [<https://perma.cc/M3AE-YFKT>].

7. Steven Munatones, *Why 31 C in Open Water Swimming? Part 1 — The Background*, SWIMMING WORLD (Oct. 27, 2012, at 17:30 ET), <https://www.swimmingworldmagazine.com/news/why-31-c-in-open-water-swimming-part-1-the-background/> [<https://perma.cc/Q77H-YGPZ>]. This quote was said by Dick Pound, a Canadian Swimming Olympian in 1960, member of the International Olympic Committee for sixteen years (serving as the vice-president from 1987–1991 and 1996–2000) and featured as one of the "100 Most Influential People in the World" in 2005, among many other honors. *Richard (Dick) W. Pound*, OLYMPIC: CANADA, <https://olympic.ca/team-canada/richard-w-pound/> [<https://perma.cc/BD5L-P6B8>] (last visited Oct. 19, 2025).

8. See Mike Sielski, *From Episcopal Academy to Paris Olympics, Here Are the Nine Remarkable Stories of Swimmer Ivan Puskovitch*, PHILA. INQUIRER (Aug. 4, 2024), <https://www.inquirer.com/sports/ivan-puskovitch-paris-olympics-open-water-swimmer-west-virginia-episcopal-academy-20240727.html> [<https://perma.cc/7XVF-9WSC>]; see also Brian Gomez, *USA Swimming Awaiting Answers in Open-Water Death*, GAZETTE (Apr. 13, 2011), https://gazette.com/news/usa-swimming-awaiting-answers-in-open-water-death/article_e5129f1c-c0fe-5e0f-94c8-079f981691dd.html [<https://perma.cc/6ZN3-5WZT>] (discussing how, after Fran's death in Fujairah, the "USA Swimming commission announced recommendations to minimize the danger" but a lack of cooperation from FINA has left these issues unresolved).

9. See *Member Organizations*, U.S. OLYMPIC & PARALYMPIC COMM., <https://www.usopc.org/member-organizations> [<https://perma.cc/6CHA-Y82P>] (last visited Oct. 19, 2025); Gomez, *supra* note 8.

10. *Fran Crippen*, FRAN CRIPPEN [hereinafter *About Fran Crippen*], <https://www.francrippen.net/gallery> [<https://perma.cc/2BJL-937T>] (last visited Oct. 29, 2025). Coach Fenwick, now

and friend.¹¹ Coming from a family of accomplished swimmers, his older sister, Maddy, was an Olympian in 2000, and his two younger sisters, Claire and Teresa, were both NCAA swimming finalists.¹² Fran was an eleven-time All-American, six-time U.S. National Champion, and a Silver Medalist in the 10K at the 2010 Pan Pacific Championships.¹³ Despite narrowly missing the Olympic team in pool swimming in 2008,¹⁴ Fran was determined to make the 2012 Olympic Games.¹⁵

However, Fran's promising journey ended tragically at the age of twenty-six in the waters off of Fujairah.¹⁶ After winning the penultimate race in Cancun, Mexico the weekend before, Fran died while swimming the last race of FINA's 2010 10K series.¹⁷ When several swimmers noticed Fran had not crossed the finish line, a search began.¹⁸ It was his fellow competitor and best friend, Alex Meyer,¹⁹ and a dive team, who returned to the

the Assistant Swim Coach at UVA, coached Fran (when Fran trained at Mission Viejo in California), and said that "Fran had a knack for being able to walk into a room and have everyone laughing within seconds." Michael Stott, *Q&A With Tyler Fenwick, Associate Head Coach at Three-Time NCAA Champion Virginia*, SWIMMING WORLD (May 1, 2023, at 03:55 ET), <https://www.swimmingworldmagazine.com/news/qa-with-tyler-fenwick-associate-head-coach-at-three-time-ncaa-champion-virginia/> [<https://perma.cc/TM4E-Q6D6>]; see discussion *infra* Section V.C of Fran's "*modus operandi*."

11. Fran even coached at Germantown Academy for free just to give back. This is how I met Fran since he coached the group that I was a part of. His Coach, Dick Shoulberg, tried to offer him cash at a Christmas party, and Fran said, "don't ever do that again." Chuck Warner & Todd Kemmerling, *Tragic Loss of Fran Crippen: Never Again?*, SWIMMING WORLD, Feb. 2015, at 1, 27, <http://magazines.swimmingworld.com:9997/SW/MagazinePDF/201502.pdf> [<https://perma.cc/LXC9-VUT4>]; see *About Fran Crippen*, *supra* note 10.

12. *About Fran Crippen*, *supra* note 10. Claire Crippen became my new coach after Fran passed away. My brother also trained with Teresa Crippen at the University of Florida. In many ways, Fran remained a part of my life even after he was gone.

13. *Id.*; see *infra* Section V.C, (discussing Fran's race at the 2010 Pan Pacific Championships).

14. Fran placed tenth overall in the 400-meter freestyle at the 2008 Olympic Trials. The top eight in this event qualified for the 2008 Olympic Games. See RESULTS SUMMARY, 2008 U.S. OLYMPIC TEAM TRIALS 1, 102 (2008), <https://websitedevsa.blob.core.windows.net/sitefinity/docs/default-source/eventdocuments/meet-results/2008-u.s.-olympic-team-trials/2008-u-s-olympic-team-trials-complete-results.pdf> [<https://perma.cc/T8VT-TR3Q>].

15. See *About Fran Crippen*, *supra* note 10.

16. Hunter, *supra* note 2.

17. *About Fran Crippen*, *supra* note 10.

18. Thomas Lurz *Rips Race Conditions*, ESPN (Oct. 27, 2010, at 09:17 ET) [hereinafter *Fujairah's Race Conditions*], <https://www.espn.com/olympics/swimming/news/story?id=5722846> [<https://perma.cc/H743-D6HY>].

19. See *infra* Section V.C, discussion of Alex Meyer.

course in search of Fran—an unacceptable response for a life-threatening situation.²⁰ As the most-decorated German open-water distance swimmer of all time Thomas Lurz²¹ pointed out, “swimmers go under water [sic] in seconds. There need to be more boats, jet skis, [and] canoes who can take care of every swimmer.”²² After two hours of searching, Fran’s body was found just before the last buoy—approximately 400 meters from the finish line.²³ He was rushed to shore and transported to Fujairah Hospital, where he was pronounced dead.²⁴

Fran’s death should have led to sweeping changes in open-water swimming, but it merely exposed a troubling lack of safety regulations and accountability.²⁵ The lack of substantial reform since that tragic day continues to put athletes at risk.²⁶ The “swimming community around the world [may have] stopped in its tracks” the day Fran died, but it is time to break

20. *Fujairah’s Race Conditions*, *supra* note 18.

21. Anne Lepesant, *German Open Water Superstar Thomas Lurz Announces Retirement*, SWIMSWAM (May 1, 2015), <https://swimswam.com/german-open-water-superstar-thomas-lurz-announces-retirement/> [<https://perma.cc/UAG2-S8NY>]. Thomas Lurz has twelve world championship titles and is renowned as the most decorated open-water swimmer of all time. He was also a silver medalist at the 2012 London Olympics. See Daniela Kapser, *120 Attend Retirement Ceremony for German Great Thomas Lurz*, SWIMSWAM (Aug. 31, 2015), <https://swimswam.com/120-attend-retirement-ceremony-for-german-great-thomas-lurz/> [<https://perma.cc/S7C2-2XGN>].

22. Andrew Dampf, Stephen Wilson, Mark Walsh & Beth Harris, *Conditions Slammed After Local Swimmer’s Death*, ABC7 (Oct. 25, 2010), <https://abc7.com/archive/7742548/> [<https://perma.cc/YU7A-B5DQ>].

23. Hunter, *supra* note 2; *Fujairah’s Race Conditions*, *supra* note 18.

24. Bonnie D. Ford, *What Have We Learned, 10 Years After Swimmer Fran Crippen’s Avoidable Death?*, ESPN (Oct. 23, 2020, at 14:07 ET), https://www.espn.com/olympics/story/_/id/30169514/what-learned-10-years-swimmer-fran-crippen-avoidable-death [<https://perma.cc/2P9Z-MB9K>].

25. Craig Lord, *Haley Anderson & Ashley Twichell Stay Safe/Honour Fran by Pulling Out of Qatar Beach Games*, SWIMMING WORLD (Oct. 9, 2019, at 16:16 ET) [hereinafter Lord, *U.S. Swimmers Pull Out of Qatar Beach Games*], <https://www.swimmingworldmagazine.com/news/haley-anderson-ashley-twichell-stay-safe-honour-fran-by-pulling-out-of-qatar-beach-games/> [<https://perma.cc/237J-QJJP>].

26. Craig Lord, *Andrew Gemmell’s Red Flag to FINA: “A Matter of Time Until We Have Another Tragedy”*, SWIMMING WORLD (Nov. 2, 2019, at 00:28 ET) [hereinafter Lord, *A Matter of Time Until Another Tragedy*], <https://www.swimmingworldmagazine.com/news/andrew-gemmells-red-flag-to-fina-a-matter-of-time-until-we-have-another-tragedy/> [<https://perma.cc/W2AM-FS9D>].

free from inaction and push for real reform.²⁷ The governing bodies of swimming have had their time to fix the issue, yet have failed. The only solution left is legislative action.

Recent events, like the pollution and water currents of the Seine River during the 2024 Paris Olympics, further highlight how environmental hazards and inadequate safety measures persist in the sport of open-water swimming.²⁸ Athletes continue to take these risks—driven by their dreams, their competitive natures, and the legacies of those who came before them.²⁹ However, are we living up to the premise that “[a]thletes should not have to swim through sewage in pursuit of their Olympic Dreams[?]”³⁰

This Note argues that the governing bodies of open-water swimming, particularly USA Swimming, have failed to establish adequate safety measures in open-water swimming. It is now Congress’s duty to pass the Open-Water Swimming Safety Act to mandate enforceable safety standards. These standards include establishing regional open water swimming associations, stricter water condition regulations, improving athlete-to-overseer ratios, and creating stricter race-day monitoring—ensuring that no other swimmer suffers the same fate as Fran Crippen. The time for change is long overdue.

Part I of this Note provides the history of open-water swimming. Part II examines the governing bodies of open-water swimming, specifically World Aquatics and USA Swimming. Part III explores the structure of open-water swimming events, including the World Aquatics World Cup and the Olympic Games. Part IV discusses notable open-water incidents that expose ongoing safety failures. Part V compares open-water

27. David Rieder, *Remembering Fran Crippen, Three Years Later*, SWIMMING WORLD (Oct. 23, 2013, at 12:17 ET), <https://www.swimmingworldmagazine.com/news/remembering-fran-crippen-three-years-later/> [https://perma.cc/95RA-4QG3].

28. Devna Bose, *Here’s What to Know About Seine River Water Quality During the Paris Olympics*, AP NEWS (July 30, 2024, at 07:00 ET), <https://apnews.com/article/olympics-2024-seine-water-quality-bacteria-f04236aa61b936912f9af65f7e3fa9ba> [https://perma.cc/JA53-X6RS].

29. See *infra* Section IV.E, Ivan Puskovitch’s commitment to swim in the Seine River.

30. Lynne Cox, *Olympians Shouldn’t Swim Through Sewage*, N.Y. TIMES (May 5, 2016), <https://www.nytimes.com/2016/05/06/opinion/olympians-shouldnt-swim-through-sewage.html> [https://perma.cc/U2LT-V463].

swimming to Ironman competitions, presenting alternative safety and event management models. Finally, Part VI proposes the Open-Water Swimming Safety Act, a federal bill that mandates safety reforms within USA Swimming and aims to legally implement these enforceable safety measures before the 2028 Los Angeles Olympic Games.

I. THE HISTORY OF OPEN-WATER SWIMMING

Fran's death was not an isolated incident but rather a tragic result of systemic issues that have long plagued the sport of open-water swimming.³¹ To understand how these issues persist, it is important to explore the evolution of open-water swimming and the absence of safety regulations throughout its development.

A. Formation of Open-Water Swimming

Competitive open-water swimming, also known as marathon swimming, gained popularity over the last thirty years, but the sport itself dates back to the nineteenth century.³² Modern open-water swimming can be dated to 1810, when Lord Byron completed a swim across the Hellespont, now called the Dardanelles, traveling from the European side to the Asian shore.³³ In fact, the first modern Olympic Games in 1896 featured swimming competitions in open water.³⁴ However, it was not until 2008 in Beijing that the 10K event was officially included in the Olympic Games program.³⁵

31. Dampf et al., *supra* note 22; see Lord, *A Matter of Time Until Another Tragedy*, *supra* note 26.

32. See *Open Water Swimming 5KM*, ANOC WORLD BEACH GAMES, [https://www.anocolympic.org/awbg-sport/open-water-5km/#:~:text=2008%3A%20Open%20Water%20Swimming%20\(10,time%20in%20Beijing%20\(CHN](https://www.anocolympic.org/awbg-sport/open-water-5km/#:~:text=2008%3A%20Open%20Water%20Swimming%20(10,time%20in%20Beijing%20(CHN) [https://perma.cc/ARP2-66QJ] (last visited Nov. 1, 2025).

33. *Id.*

34. *Id.*; *Guide to Open Water Swimming: History and Tips*, MASTERCLASS (Sep. 7, 2021), <https://www.masterclass.com/articles/open-water-swimming-guide> [https://perma.cc/5S3P-RGQL].

35. *Open Water Swimming 5KM*, *supra* note 32.

Not to be mistaken for pool swimming, open-water swimming takes place in natural bodies of water such as rivers, lakes, oceans, or any other body of open-water.³⁶ Race distances vary widely, ranging from 750 meters (the swim portion of a Triathlon) to twenty-five kilometers.³⁷ For reference, a 10K race takes about two hours for the fastest and most elite swimmers but can take a slower swimmer upwards of four hours.³⁸ Richard Weinberger, Canadian long-distance swimmer and a bronze medalist in the 10K at the 2012 Summer Olympics, said that “open water swimming is pretty hardcore . . . [w]e race, rain or shine. Whether there is sea life there that wants to kill us and if there is thunder and lightning. It doesn’t matter. The show still goes on.”³⁹

The sport made its competitive debut at the 1991 FINA World Aquatics Championships in Perth, Australia, with a 25K.⁴⁰ This “World Cup” 25K race attracted swimmers and

36. *Id.*; see *infra* Section I.B, discussion of the structure of open-water swimming races; WORLD AQUATICS, COMPETITION REGULATIONS 1, 108 (2024) [hereinafter COMPETITION REGULATIONS], https://resources.fina.org/fina/document/2024/07/01/e07f560c-9edf-4eb4-b362-c65e59a9a04b/Competition-Regulations-version-1st-July-2024-publishing_V1.pdf [https://perma.cc/ZGZ5-RYZE].

37. See Elaine K. Howley, *Open Water 101: How to Pick the Right Open Water Event*, U.S. MASTERS SWIMMING (July 9, 2014), <https://www.usms.org/fitness-and-training/articles-and-videos/articles/open-water-101-how-to-pick-the-right-open-water-event?Oldid=2987> [https://perma.cc/E9Q6-W9PF]; *Marathon Swimming*, OLYMPICS, <https://www.olympics.com/en/sports/marathon-swimming/#:~:text=%E2%80%9COpen%20water%E2%80%9D%20swimming%20became%20an,in%202001%20in%20Fukuoka%2C%20Japan> [https://perma.cc/J4MM-J5YN] (last visited Nov. 1, 2025).

38. Joshua Lawton, *Olympic 10K Marathon Swim vs. Marathon vs. 10K Run*, TRAINING PEAKS, <https://www.trainingpeaks.com/blog/10k-marathon-swim-vs-marathon-vs-10k-run/> [https://perma.cc/4VBQ-XB3N] (last visited Nov. 1, 2025); *Tips For Your First 10K Swim*, GREAT N. SWIM, <https://www.greatswim.org/training/blog/10k-marathon-open-water-swim-tips#:~:text=If%20you're%20taking%20on,hours%20to%20finish%20the%20distance> [https://perma.cc/499Z-22X3] (last visited Nov. 1, 2025). However, many open-water races will have a “cut-off” time, requiring swimmers to complete the course within a set limit to ensure safety and maintain race logistics. See FINA OPEN WATER SWIMMING, OPEN WATER SWIMMING MANUAL 2020 EDITION, 47 (2020), https://resources.fina.org/fina/document/2021/02/03/84a6f630-7803-4915-8b27-a95e986cefc1/fina_ow_manual_2020_14may2020.pdf [https://perma.cc/A665-NYA6].

39. Justin Robertson, *Inside the Hardcore Sport of Open Water Swimming*, VICE (Aug. 12, 2015, at 12:59 ET), <https://www.vice.com/en/article/inside-the-hardcore-sport-of-open-water-swimming/> [https://perma.cc/7KLR-WTD5].

40. *Marathon Swimming*, *supra* note 37.

world-class athletes from across the globe.⁴¹ A 25K race takes elite swimmers about five hours to complete.⁴² The 1991 World Championship's success marked a turning point for the sport by helping shed light on the profile of open-water swimming and establishing it as a "challenging and exciting discipline."⁴³ However, in 2023, FINA discontinued the 25K open-water race due to low entry numbers and high operating costs.⁴⁴

The success of open-water swimming is evident given how quickly the sport gained popularity after the 1991 FINA World Cup.⁴⁵ By 1998, a 5K race was added to the same FINA World Cup in Perth.⁴⁶ Nearly a decade later, in 2007, the 10K race made its debut at the first FINA 10K Marathon Swimming World

41. See generally Aldo Seffrin, Beat Knechtle, Rodrigo Luiz Vancini, Douglas de Assis Teles Santos, Claudio Andre Barbosa de Lira, Lee Hill, Thomas Rosemann & Marilla Santos Andrade, *Origin of the Fastest 5 km, 10 km and 25 km Open-Water Swimmers—An Analysis from 20 Years and 9819 Swimmers*, 18 INT'L J. ENV'T RSCH. & PUB. HEALTH 1, 1–2 (2021) (discussing open water swimming athletes competing from the United States, Canada, Australia, Brazil, Russia, Great Britain, Ireland, Italy, France, Germany, and the Netherlands).

42. Anya Pelshaw, *Brazil's Cunha Captures Fifth World Title in 25KM Open Water to Close Worlds*, SWIMSWAM (July 1, 2022), <https://swimswam.com/brazils-cunha-captures-fifth-world-title-in-25k-open-water-to-close-worlds/> [https://perma.cc/U82W-MLTT]. For reference, "the average marathon time for beginner[] runners is about 4.5 hours (roughly 10:30 per mile)." See Eric Arnold, *How Long Does It Take to Run a Marathon? All the Factors That Impact Finish Time*, PELOTON (July 18, 2024), <https://www.onepeloton.com/blog/how-long-does-it-take-to-run-a-marathon> [https://perma.cc/J4GB-GR8R].

43. See Steven Munatones, *The Universe and History of Open Water Swimming*, OPEN WATER SWIMMING (Apr. 20, 2013) [hereinafter Munatones, *History of Open Water Swimming*], <https://www.openwaterswimming.com/the-universe-and-history-of-open-water/> [https://perma.cc/M38W-BKHA]; Rob Gray, *The History of Open Water Swimming*, SWIM WILD BLOG (Mar. 31, 2023), <https://swimwildblog.wordpress.com/2023/03/31/the-history-of-open-water-swimming/> [https://perma.cc/WBA7-F2RV].

44. Braden Keith, *World Aquatics Drops 25KM Open Water Race from World Championships Program Going Forward*, SWIMSWAM (Apr. 11, 2023), <https://swimswam.com/world-aquatics-drops-25km-open-water-race-from-world-championships-program-going-forward/> [https://perma.cc/PE4B-286B]. Without this race, this means that there are only five total open-water events in the World Championships going forward, instead of seven. *Id.*

45. Gray, *supra* note 43; Munatones, *History of Open Water Swimming*, *supra* note 43. 1,142 athletes (and sixty national federations) competed at the 1991 FINA World Championships. In 2009, 2,438 athletes (and 172 national federations) competed at the 2009 FINA World Championships. See FINA, *GLOBAL AQUATICS EXCELLENCE*, 28 (2017), https://resources.fina.org/fina/document/2021/01/13/44004e59-dc50-4b84-8116-4cb9f081bcff/global_aquatics_excellence_brochure_250118.pdf [https://perma.cc/QV2T-ETQD].

46. *Open Water Swimming 5KM*, *supra* note 32.

Cup.⁴⁷ Just a year later, in 2008, the 10K race solidified its place on the world stage at the Beijing 2008 Olympics.⁴⁸

Open-water swimming will make its United States Olympic debut at the Los Angeles Olympics in 2028, as athletes are set to compete in the 10K on the Long Beach Waterfront.⁴⁹ The rise of open-water swimming from a niche swimming discipline to an Olympic sport has been remarkable, but adequate regulatory safeguards have not matched its growth.

B. *The Structure of an Open-Water Race*

An open-water race begins with all swimmers simultaneously running into an open body of water after hearing a starting signal.⁵⁰ This is unlike an indoor race where swimmers start the race elevated on a starting block, with each swimmer having their own lane.⁵¹ In open-water swimming, after hearing the starting signal, swimmers all at once run, push, and shove to get into the water as quickly as possible.⁵² This chaotic entry is a defining feature of open-water swimming.⁵³ Once the swimmers enter the water, either by jumping or diving in, open-water swimming transforms into what feels like a contact sport,

47. *Id.*

48. *Id.*

49. *Open Water Swimming*, LA28, <https://la28.org/en/games-plan/olympics/open-water-swimming.html> [<https://perma.cc/Q3LC-CB74>] (last visited Nov. 1, 2025). The anticipated venue for the Open Water Swim is the Belmont Shore and Long Beach Zone. *Id.*

50. Annika Hobson, *Being a Newbie to Open Water Swimming*, SWIMMING WORLD (Oct. 4, 2021, at 09:14 ET), <https://www.swimmingworldmagazine.com/news/being-a-newbie-to-open-water-swimming/> [<https://perma.cc/4UEQ-WT2H>]; 2025 RULEBOOK, USA SWIMMING 111 (2025), https://websitedevsa.blob.core.windows.net/sitefinity/docs/default-source/governance/governance-lsc-website/rules_policies/rulebooks/2025-rulebook.pdf [<https://perma.cc/4VGF-GZHF>].

51. Hobson, *supra* note 50; see Elaine K. Howley, *The Definitive Guide to Open Water Swimming*, U.S. MASTERS SWIMMING [hereinafter *Definitive Guide to Open-Water Swimming*], <https://www.usms.org/fitness-and-training/guides/open-water-swimming-101> [<https://perma.cc/WZ8U-83XA>] (last visited Nov. 1, 2025).

52. Hobson, *supra* note 50.

53. See *id.*; *infra* Section V.B., discussion about Ironman changing the typical “mass start” to a “rolling start.”

with competitors pushing each other for better positioning throughout the course.⁵⁴

The lack of a physical structure in open-water swimming fundamentally distinguishes it from its indoor counterpart.⁵⁵ In open-water swimming, there is just an open body of water—no walls, no lane lines, no black guiding line at the bottom of each lane, no officials standing over each lane, and no starting blocks.⁵⁶ This raises the question: what defines an open-water course?

Unlike an indoor race, where swimmers swim back and forth in designated lanes and rely on walls at each end to turn, an open-water course is typically marked by floating buoys.⁵⁷ Swimmers must navigate around these floating buoys to complete the race, making sure not to touch them or use them to their advantage, which would result in disqualification.⁵⁸ The course layout, which can range from simple loops to complex multi-lap routes, varies depending on the location, race distance, water conditions, and other factors.⁵⁹

54. David Miner, *How to Do Open Water Swimming Race Starts and Finishes*, U.S. MASTERS SWIMMING (July 8, 2019), <https://www.usms.org/fitness-and-training/articles-and-videos/articles/how-to-do-open-water-swimming-race-starts-and-finishes> [<https://perma.cc/25B8-4BBM>]; see *infra* Part III.B.2., discussion about Katie Grimes and how the start of the Marathon Swim at the Paris Olympics caused her to fall behind by over a minute.

55. *Definitive Guide to Open-Water Swimming*, *supra* note 51.

56. *Id.*; Hobson, *supra* note 50; see *The Most Common Ways to Get Disqualified in Swimming*, MYSWIMPRO, <https://blog.myswimpro.com/2022/03/29/the-most-common-ways-to-get-disqualified-in-swimming/> [<https://perma.cc/6BCD-DTMA>] (last visited Nov. 15, 2025).

57. *Definitive Guide to Open-Water Swimming*, *supra* note 51; Hobson, *supra* note 50; *The Most Common Ways to Get Disqualified in Swimming*, *supra* note 56.

58. *Definitive Guide to Open-Water Swimming*, *supra* note 51; Hobson, *supra* note 50; *The Most Common Ways to Get Disqualified in Swimming*, *supra* note 56; 2025 RULEBOOK, *supra* note 50, at 113; see *infra* Section V.B, discussion about how Ironman encourages swimmers to use the buoys if they need to stop or rest at any point during the swim with no penalty, as long as those objects are not used to move themselves forward.

59. See *Definitive Guide to Open-Water Swimming*, *supra* note 51; *Open Water Swimming*, USA SWIMMING, <https://www.usms.org/fitness-and-training/guides/open-water-swimming-101> [<https://perma.cc/WZ8U-83XA>] (last visited Nov. 15, 2025); Hobson, *supra* note 50; WORLD AQUATICS, OPEN WATER SWIMMING MANUAL: 2024 EDITION 4–5 (2024) [hereinafter 2024 OPEN WATER SWIMMING MANUAL], https://resources.fina.org/fina/document/2024/01/29/6570516f-e8c1-4e30-a907-de085a6cb29c/01022024_AQUA_2024_Open_Water_Swimming_Manual_V5_FINAL-DVdB.pdf [<https://perma.cc/8FFP-W2AV>].

Additionally, the natural environment itself introduces complexities into open-water swimming.⁶⁰ Waves, currents, water temperature, and marine life are variables that can influence every swimmer's race.⁶¹ These uncontrollable and unpredictable conditions make open-water races a test of not only physical endurance but also adaptability and mental toughness.⁶²

No matter the type of open-water course, open-water swimmers heavily rely on "sighting."⁶³ Sighting is when a swimmer periodically lifts their head out of the water while swimming to spot (look for) buoys or landmarks.⁶⁴ Sighting is necessary in open-water swimming because it allows swimmers to make sure they are swimming on course.⁶⁵ Additionally, unlike indoor swimming where there is a black line at the bottom of each lane that each swimmer uses to guide themselves down the lane and into the wall, there is no black line to follow in open-water swimming.⁶⁶ This difference adds an element of strategy and

60. See *Definitive Guide to Open-Water Swimming*, *supra* note 51; see also Thomas Lurz, SEAQUAL INITIATIVE, <https://www.seaqual.org/heroes/thomas-lurz/> [<https://perma.cc/AM9D-CJG3>] (last visited Nov. 1, 2025) (stating how World Champion and Olympic Medalist Thomas Lurz described joining open water swimming to face up against natural elements such as "strong currents, waves, water temperatures, animals[,] and . . . the physical distance to the opponents").

61. *Definitive Guide to Open-Water Swimming*, *supra* note 51; see *infra* Part III.B.2, discussion by Katie Grimes on the current in the Seine River.

62. As World Aquatics put it, "10km is tactical, and the preparation is vital. The best swimmers may not warm up before the race begins, but they are strategic in everything else leading up the race." Andy Ross, *How the World's Best Open Water Swimmers Prepare for the 10K on Race Day*, WORLD AQUATICS, <https://www.worldaquatics.com/news/2661528/how-the-worlds-best-open-water-swimmers-prepare-for-the-10k-on-race-day> [<https://perma.cc/GJB5-5E4B>] (last visited Nov. 1, 2025). Thomas Lurz said that "[e]xperience is the most important thing in the sport. The most exciting thing is swimming in the ocean and feeling the strong power of nature and water. Swimming in currents and really choppy water with cold water temperatures is most challenging." Thomas Lurz, *supra* note 60.

63. *Definitive Guide to Open-Water Swimming*, *supra* note 51.

64. Scott Bay, *Open Water Swimming Basics*, U.S. MASTERS SWIMMING (June 6, 2023), <https://www.usms.org/fitness-and-training/articles-and-videos/articles/open-water-swimming-basics> [<https://perma.cc/6VUN-8HKL>]. Swimmers look like "alligators" when they sight, as they lift their head out of the water just to their waterline for about five to ten seconds at a time to be able to see what is in front of them.

65. *Definitive Guide to Open-Water Swimming*, *supra* note 51.

66. *Id.* In fact, in most open-water races you cannot see anything in the water — thus sighting is necessary to know you are heading in the right direction. *Id.*

physical challenge to the race, as frequent sighting can disrupt a swimmer's rhythm (tempo) and waste energy.⁶⁷

At its core, open-water swimming is not a casual swim; it is a fight against currents, extreme water temperatures, and the unknown.⁶⁸ "Every open-water swimming course is different and can vary" depending on the day and even the hour.⁶⁹ Thus, safety plans for open-water swimming courses need to be flexible and adaptable.⁷⁰ It is a sport of endurance, strategy, and resilience, challenging even the best athletes to navigate not only the course but also the unpredictable forces of nature and the competitive intensity of their peers.⁷¹

II. OPEN-WATER SWIMMING GOVERNING BODIES

Open-water swimming is governed by World Aquatics (formerly FINA) on the international level.⁷² World Aquatics sets

67. See Bay, *supra* note 64; Hobson, *supra* note 50. Also, if a swimmer is not good at sighting, this can cause them to veer off-course and thereby swim extra. Hobson, *supra* note 50; see FÉDÉRATION INTERNATIONALE DE NATATION, OPEN WATER SWIMMING GUIDE: 2022 EDITION 34, 38 (2022), https://resources.fina.org/fina/document/2022/03/14/357ae477-02a3-44ad-bdf6-0668c3fc7d39/OWS-Guide_2022_Final.pdf [<https://perma.cc/SQ4P-EDPV>]. Another distinctive aspect of open-water swimming is the use of feeding poles. In longer races, swimmers rely on their support teams who provide nutrition via feeding poles extending from boats or kayaks floating near the swimmer. These brief moments of refueling are critical for maintaining energy during grueling races like the 10K. See OPEN WATER SWIMMING GUIDE: 2022 EDITION, *supra*, at 42–43, 66.

68. See generally WOWSA Rules & Regulations, WOWSA (Nov. 8, 2024), <https://www.open-waterswimming.com/docs/rules-regulations/wowsa-rules-regulations/#:~:text=These%20are%20unassisted%20marathon%20swims,standard-ized%20rules%20and%20safety%20protocols> [<https://perma.cc/4E5K-ZQ5D>] (stating how "[o]pen water marathon swims are special distance challenges longer than 10 kilometers" that are recognized for their mental and physical toll).

69. *Id.*

70. *Id.*

71. See Ross, *supra* note 62; see also Abby Bergman, 5 Major Differences Between Open Water Swimming and Pool Swimming, SWIMMING WORLD (May 2, 2016, at 09:00 ET), <https://www.swimmingworldmagazine.com/news/5-major-differences-between-open-water-swimming-and-pool-swimming/> [<https://perma.cc/R7SY-T3JB>] (discussing how open-water swimming is vastly different from pool swimming, especially because open-water swimmers are often driven by internal desires to complete a goal or even simply finish a swim, as they are "bored with controlled environments" like pool swimming).

72. WORLD AQUATICS, CONSTITUTION 8 (2023), https://resources.fina.org/fina/document/2023/03/06/37510867-d297-4f0c-a993-909aed3be87c/World-Aquatics-Constitution-Approved-2023.01.30_clean.pdf [<https://perma.cc/K65D-DRFB>]; see also Rachel MacDonald, Note, "Doping on a Hanger": Regulatory Lessons from the FINA Elimination of the Polyurethane Swimsuit

the standards for elite competitions such as the Olympics and the World Championships.⁷³ On the other hand, USA Swimming oversees the sport in the United States.⁷⁴ Despite their regulatory authority, these governing bodies have repeatedly failed to implement adequate safety measures in open-water swimming.⁷⁵ Understanding their shortcomings is essential to identifying the structural failures that have allowed preventable tragedies, like Fran Crippen's, to occur.

A. World Aquatics (FINA) Governance

World Aquatics was originally founded in 1908.⁷⁶ World Aquatics had exclusive control over only three sports: swimming, diving, and water polo.⁷⁷ In 2022, however, World Aquatics rebranded to unify all six aquatic sports—swimming, open-water swimming, diving, water polo, artistic swimming, and high diving—under one governing body.⁷⁸

As the exclusive international governing body for all aquatics, World Aquatics is recognized by the International Olympic Committee (IOC), and it sets the qualifying criteria for

Applied to the International Anti-Doping Paradigm, 51 COLUM. J.L. & SOC. PROBS. 275, 279–81 (2017) (discussing the structure of FINA, now known as World Aquatics).

73. WORLD AQUATICS, CONSTITUTION, *supra* note 72, at 27.

74. See *Open Water Swimming*, *supra* note 59; USA SWIMMING, OPERATING POLICY MANUAL 5, https://www.usaswimming.org/docs/default-source/governance/governance-lsc-website/rules_policies/operating-policy-manual.pdf [<https://perma.cc/6MLV-EMKG>].

75. See David Gerrard & Sergio Migliorini, *Testing the Waters: Highlighting the Safety of Open Water Swimmers*, 5 ASPETAR SPORTS MED. J. 58, 61 (2016) (discussing that “open water swimming stresses athletes in an unforgiving environment where mechanisms of thermoneutrality are influenced by total water immersion and impaired heat dissipation”).

76. *We Are World Aquatics*, WORLD AQUATICS, <https://www.worldaquatics.com/about> [<https://perma.cc/6284-SNQJ>] (last visited Nov. 1, 2025); see MacDonald, *supra* note 72, at 278–81 (discussing the structure of FINA, now known as World Aquatics). Before rebranding to World Aquatics, FINA was founded by eight national federations: Belgium, Denmark, Finland, France, Germany, Great Britain, Hungary, and Sweden. *Creation of FINA*, INT'L OLYMPIC COMM. (Jan. 8, 2025), <https://www.olympics.com/ioc/news/creation-of-fina> [<https://perma.cc/WKR2-UJ9A>].

77. See FINA, FINA GENERAL RULES 2 (2021), https://resources.fina.org/fina/document/2021/08/17/199e4039-7a9c-4704-aca7-8e0ee4d10fff/FINA-General-Rules_05.08.2021.pdf [<https://perma.cc/V9RG-82Z6>].

78. FINA Commc'ns Dep't, *FINA Becomes World Aquatics as New Brand Launched*, WORLD AQUATICS (Dec. 12, 2022, at 09:25 ET), <https://www.worldaquatics.com/news/2979029/fina-becomes-world-aquatics-as-new-brand-launched> [<https://perma.cc/XX3T-4KVD>].

competing in the Olympics as well as other major international competitions.⁷⁹ The launch of World Aquatics as a new brand stemmed from a series of athlete-driven reforms and leadership under its new president, Husain Al-Musallam.⁸⁰ Following the rebrand, World Aquatics continues to exercise exclusive control over the three original sports—swimming, diving, and water polo—but also expands its domain to all six aquatic sports, thus maintaining a monopoly on the governance of international swimming.⁸¹

79. *We Are World Aquatics*, *supra* note 76.

80. FINA Commc'ns Dep't, *supra* note 78; see Matthew De George, *Report: FINA President Husain Al-Musallam Subject of Renewed Interest in U.S. Corruption Probe*, SWIMMING WORLD (Sep. 2, 2021, at 23:05 ET), <https://www.swimmingworldmagazine.com/news/report-fina-president-husain-al-musallam-subject-of-renewed-interest-in-u-s-corruption-probe/> [<https://perma.cc/4WSP-3JK9>] (discussing how FINA President Husain Al-Musallam is the subject of renewed interest by the United States in its investigation of global sports corruption); see also Craig Lord & Jens Weinreich, *Groundhog Day: The Next Corruption Allegations Against the President of World Aquatics*, INQUISITOR (Feb. 8, 2024, at 18:23 ET), <https://www.the-inquisitor-magazine.com/email/da745860-bba2-4dc7-954f-f00a832760a9/> [<https://perma.cc/869B-2Z2B>] (stating how, in the first week of February alone, Husain Al-Musallam was accused of stealing seven million of Kuwaiti public funds meant for Asia Aquatics); Riley Overend, *Aqua President Husain Al-Musallam Claims Ethics Investigation Related to OCA Elections*, SWIMSWAM (Feb. 9, 2024), <https://swimswam.com/aqua-president-husain-al-musallam-claims-innocence-in-wake-of-ethics-investigation/> [<https://perma.cc/S3F6-VDW9>] (explaining that although Husain Al-Musallam was cleared by the Kuwait Olympic Committee's Ethics Commission for wrongdoing, he has long been linked to Sheikh Ahmad, a "kingmaker" in international sports elections, who has been implicated in Olympic bribery and forgery scandals).

81. See *Paris 2024 – Qualifications: Swimming*, WORLD AQUATICS, <https://www.worldaquatics.com/competitions/paris-2024-swimming-info> [<https://perma.cc/35PG-L7D5>] (last visited Nov. 2, 2025); *Paris 2024 – Qualifications: Marathon Swimming*, <https://www.worldaquatics.com/competitions/paris-2024-marathon-swimming-info> [<https://perma.cc/WUJ4-9P8C>] (stating marathon swimming Olympics qualification criteria); see, e.g., COMPETITION REGULATIONS, *supra* note 36, at 4–7 ("World Aquatics alone shall have the right to organise [sic] World Championships and other World Aquatics competitions for Swimming, Diving, High Diving, Water Polo, Artistic Swimming, and Open Water Swimming. . . . The World Aquatics Bureau is competent to establish any rules and regulations pertaining to the conduct of the Olympic Games and World Aquatics Championships. It will notably establish the qualification period and system.").

In fact, three professional swimmers (Katinka Hosszu, Michael Andrew, and Tom Shields, all of whom are swimming Olympians) brought antitrust violations and state tort claims against FINA due to its control over international swimming competitions. *Shields v. Fédération Internationale de Natation*, 419 F. Supp. 3d 1188, 1196–98 (N.D. Cal. 2019); see Braden Keith, *Katinka Hosszu, Michael Andrew, Tom Shields File Lawsuit Against FINA*, SWIMSWAM (Dec. 7, 2018), <https://swimswam.com/katinka-hosszu-michael-andrew-tom-shields-file-lawsuit-against-fina/> [<https://perma.cc/X93A-7ZHT>]; Complaint at 28–30, *Int'l Swimming League, LTD. v. Fédération Internationale de Natation*, No. 3:18-cv-07394 (N.D. Cal. Dec. 7, 2018). Despite the Ninth

World Aquatics oversees 209 national federations, each serving as a national umbrella organization for aquatic sports within its respective country.⁸² As the governing body, World Aquatics oversees each country and requires each to have a single officially recognized member federation.⁸³ In the United States, World Aquatics oversees USA Swimming.⁸⁴

B. USA Swimming

The United States Aquatic Sports, Inc. is the designated member federation of the United States.⁸⁵ The United States Aquatic Sports, Inc., appointed USA Swimming, Inc., as the national governing body (NGB) for swimming.⁸⁶ As the NGB, USA Swimming meets the membership requirements outlined in Section 8 of the United States Olympic & Paralympic Committee (USOPC) Bylaws, as USA Swimming governs an Olympic sport, oversees amateur competition, is responsible for

Circuit's decision in September of 2024 to allow the swimmers' antitrust claims to proceed, the case remains unresolved, leaving World Aquatics with unchecked authority over international swimming. See *Shields v. World Aquatics*, No. 23-15092, 2024 WL 4211477, at *1-4 (9th Cir. Sep. 17, 2024). World Aquatics is actively settling litigation with athletes and has parted with \$7.1 million as of September 2025. See *World Aquatics Reaches Settlement With Swimmers in U.S. Lawsuit, Adds to Support with \$4.6 Million Fund*, WORLD AQUATICS (Sep. 8, 2025, at 08:50 CET), <https://www.worldaquatics.com/news/4357395/world-aquatics-resolves-litigation-with-settlement-supporting-athletes-from-2018-and-2019-isl-seasons> [https://perma.cc/E9JF-JPWK] (reporting that World Aquatics will dedicate \$4.6 million settle contracts with athletes).

82. WORLD AQUATICS, WORLD AQUATICS JOB DESCRIPTION 1 (2024), <https://resources.fina.org/fina/document/2024/01/06/faf7b788-a1ab-41e8-879e-d6af24c9c880/Jan-2024-World-Aquatics-Job-description-Finance-Director.pdf>. [https://perma.cc/ARZ6-CEHE].

83. See WORLD AQUATICS, CONSTITUTION, *supra* note 72, at 4, 7. *Who Is United States Aquatic Sports*, UNITED AQUATIC SPORTS, <https://www.gomotionapp.com/team/usas/page/about-usas/who-is-usas> [https://perma.cc/ER49-WPLY] (last visited Nov. 2, 2025).

84. *Organization of the Sport*, SWIM DCS, <https://www.swimdcs.com/page/about-dcs/custom-page-organization-of-sport> [https://perma.cc/NMQ4-AGBQ] (last visited Nov. 2, 2025); *Who Is United States Aquatic Sports*, *supra* note 83.

85. *Who Is United States Aquatic Sports*, *supra* note 83.

86. *Overview: About USA Swimming*, USA SWIMMING [hereinafter *Overview of USA Swimming*], <https://www.usaswimming.org/about-usas/organization/overview> [https://perma.cc/5PP4-G5Q9] (last visited Nov. 2, 2025). There is a total of fifty Olympic NGB's in the United States. *Olympic and Paralympic Organization Structure*, U.S. OLYMPIC & PARALYMPIC COMM., <https://www.usopc.org/olympic-organization-structure> [https://perma.cc/K9KX-6VCC] (last visited Nov. 2, 2025).

participant safety, and promotes athlete development in accordance with USOPC standards.⁸⁷

USA Swimming functions as the primary liaison between American swimmers and World Aquatics, with one of its goals being to prepare and select athletes for the Olympic Games.⁸⁸ As the NGB for swimming in the United States,⁸⁹ USA Swimming operates under the authority of the Ted Stevens Olympic and Amateur Sports Act,⁹⁰ which provides the framework for the USOPC and NGBs to coordinate and oversee amateur athletic activities, particularly those related to international competition.⁹¹

USA Swimming is, thus, tasked with representing the United States at the relevant international competition.⁹² Outside of its role in elite competition, USA Swimming is responsible for training, competing, and promoting the development of the sport domestically.⁹³ USA Swimming's vision is to inspire and enable its athletes to achieve excellence not only in swimming, but also in life.⁹⁴

USA Swimming also has national committees made up of volunteers, each dedicated to different aspects of the sport.⁹⁵ One of the committees is the Open Water Swimming Committee (OWSC), which helps USA Swimming with "developing and promoting the success of Open Water Swimming at all

87. *Member Organizations*, *supra* note 9; see U.S. OLYMPIC & PARALYMPIC COMM., BYLAWS OF THE UNITED STATES OLYMPIC & PARALYMPIC COMMITTEE 36–37 (2025), https://assets.contentstack.io/v3/assets/blt9e58afd92a18a0fc/bltb00f31063541113d/679a96a439c11adae11385f9/USOPC_Bylaws_-_February_1_2025_-_final_for_publication_FINAL-ua.pdf [<https://perma.cc/WA4T-CXMZ>] (citing § 8.3 of the bylaws, which outlines the membership categories).

88. *See Overview of USA Swimming*, *supra* note 86.

89. *Member Organizations*, *supra* note 9.

90. Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. § 220501.

91. *Overview of USA Swimming*, *supra* note 86; see OPERATING POLICY MANUAL, *supra* note 74, at 5, 109.

92. *See* 36 U.S.C. § 220523(a)(1) (outlining authority of national governing bodies).

93. *Overview of USA Swimming*, *supra* note 86. USA Swimming fosters development of swimming through club programs, events, educational initiatives, and more. *Id.*

94. *Id.*

95. *Committees*, USA SWIMMING, <https://www.usaswimming.org/about-usas/governance/committees> [<https://perma.cc/N8HF-N3V8>] (last visited Nov. 2, 2025).

levels.”⁹⁶ Meeting minutes from an OWSC meeting in September 2023 reveal that discussions focused primarily on competition logistics, time standards, considerations for relay selection, and how to make the men’s races “more competitive.”⁹⁷ Even though water quality issues in Paris were raised during this meeting, the committee failed to propose any action,⁹⁸ exposing the rather passive role USA Swimming plays in safeguarding the participants in open-water swimming.

Ultimately, World Aquatics retains control over international open-water swimming, including Olympic qualification standards, while USA Swimming administers the sport at the national level.⁹⁹ Thus, USA Swimming defers to World Aquatics’ international rules when competitions are held overseas, particularly World Aquatics’ Constitution, even though those rules have failed to protect its athletes.¹⁰⁰ This deference raises critical concerns about whether USA Swimming should take a stronger, more proactive role in advocating for meaningful safety reforms rather than acquiescing to World Aquatics’ rules that may be harming its athletes.

96. USA SWIMMING, LIST OF COMMITTEES 3 (2025), <https://www.usaswimming.org/docs/default-source/governance/usa-swimming-list-of-committees.pdf> [https://perma.cc/WU2T-6X97].

97. USA SWIMMING, USA SWIMMING OPEN COMMITTEE MINUTES 1 (2023), <https://web-sitedevsa.blob.core.windows.net/sitefinity/docs/default-source/governance/national-committee-minutes/open-water-committee/open-water-committee-minutes-9-28-23.pdf> [https://perma.cc/JWY5-EDQ7].

98. *See id.* This is particularly alarming, as concerns regarding the water quality of the Seine were raised over a year prior to the Olympic Marathon Swimming event. Ellie Gabel, *How Paris Is Monitoring Water Quality Ahead of the 2024 Olympics*, GLOB. WATER F. (Sep. 5, 2023), <https://www.globalwaterforum.org/2023/09/05/how-paris-is-monitoring-water-quality-ahead-of-the-2024-olympics/> [https://perma.cc/F2P4-PVMH]. Yet, USA Swimming’s Open Water Swimming Committee failed to implement any concrete measures to address this issue. *Id.*

99. *See Paris 2024 – Qualifications: Swimming*, *supra* note 81; WORLD AQUATICS CONSTITUTION, *supra* note 72, at 10; *Overview of USA Swimming*, *supra* note 86; *see also* MacDonald, *supra* note 72 at 280–81 (discussing the structure of FINA, now known as World Aquatics).

100. *See generally* USA SWIMMING, USA SWIMMING ATHLETE SELECTION PROCEDURES 2023 WORLD AQUATICS CHAMPIONSHIPS 4–6 (2023), <https://www.usaswimming.org/docs/default-source/national-teamdocuments/selections/2023-world-championships-athlete-selection-procedures.pdf> [https://perma.cc/DJ9Y-TR55] (describing world championships’ athlete selection procedure from 2023).

III. MODERN OPEN-WATER SWIMMING EVENTS

Modern open-water swimming has expanded far beyond its traditional roots, now becoming a staple in international competitions.¹⁰¹ From the Olympic 10K marathon swim to the World Aquatics World Cup Championships, the sport now attracts athletes of the highest caliber.¹⁰² As open-water swimming continues to grow, this section explores why it is critical to understand how these events are structured and examine whether the current safety regulations are sufficient to protect the athletes competing.

A. International Level Competitions—World Aquatics World Cup

At the international level, World Aquatics governs many high-profile open-water competitions, the most prominent is the Open Water Swimming World Cup; however, the financial structure of the Games incentivizes dangerous competition entirely at the expense of athletes.

1. World cup background

One of the World Aquatics' premier open-water competitions is the World Aquatics Open Water Swimming World Cup (OWSWC), an elite global competition series held annually across multiple international locations.¹⁰³ This competition

101. See Taylor Brien, *A Voice for the Sport: Open Water Explosion*, SWIMMING WORLD MAG. (Nov. 4, 2018, at 10:00 ET), <https://www.swimmingworldmagazine.com/news/swimming-world-presents-a-voice-for-the-sport-open-water-explosion/> [<https://perma.cc/G4B8-3AA5>] (illustrating the rise of open-water swimming events with an estimated 30,000 annually organized open-water events globally).

102. See generally Elaine K Howley, *The 80/20 Mind-Body Split in Open Water Swimming*, U.S. MASTERS SWIMMING (Aug. 1, 2023), <https://www.usms.org/fitness-and-training/articles-and-videos/articles/the-80-20-mind-body-split-in-open-water-swimming> [<https://perma.cc/3AEV-K9LY>] (describing how Alison Streeter—the Queen of the English Channel—who held the record for the most English channel crossings (forty three) until 2021, was inducted into the International Swimming Hall of Fame).

103. WORLD AQUATICS, WORLD AQUATICS SWIMMING WORLD CUP 2023, at 4 (2023), https://resources.fina.org/fina/document/2023/10/03/65996cce-26b8-47a0-a5c8-468f9c96066d/2023_World-Aquatics_SWC_Official-Prog_A4-3.pdf [<https://perma.cc/D5B9-PV2L>]. The 2025 World Aquatics Open Water Swimming World Cup will kick off in Somabay,

brings together the best open-water swimmers worldwide.¹⁰⁴ There are five stops for the 2025 OWSWC, with each event spanning two to three days, and with the schedule determined by World Aquatics and the local organizing committees.¹⁰⁵ The events include the individual 10K race for both men and women, along with a mixed 4x1500-meter team relay.¹⁰⁶

While the OWSWC provides a platform for elite competition, it also highlights World Aquatics' dual role as both a regulator and a commercial entity.¹⁰⁷ World Aquatics profits from these high-profile events while maintaining exclusive control over competition structure, qualification, and prize distribution.¹⁰⁸ In fact, World Aquatics' resources are primarily derived from the World Aquatics Championships, like the OWSWC and the Olympic Games.¹⁰⁹ However, its governance prioritizes

Egypt on February 21st–22nd. Somabay is known for its crystal-clear water, and this is the third consecutive year it will be hosting the Open Water Swimming World Cup. *See World Aquatics Open Water Swimming World Cup 2025 – Stop 1*, WORLD AQUATICS, <https://www.worldaquatics.com/competitions/4794/world-aquatics-open-water-swimming-world-cup-2025> [https://perma.cc/LV6T-72C3] (last visited Nov. 15, 2025); WORLD AQUATICS, WORLD AQUATICS OPEN WATER SWIMMING WORLD CUP: IBIZA 2025, at 3 (2025), https://resources.fina.org/fina/document/2025/02/14/91c688c4-2837-42ee-9435-22000e470cf/Information_Bulletin_OWSC2025_Ibiza_FINAL.pdf [https://perma.cc/BAV2-2YR2].

104. *See* Torin Koos, *Spectacular Locations Await in the 2025 World Aquatics Open Water Swimming World Cup*, WORLD AQUATICS (Dec. 3, 2024, at 08:21 ET), <https://www.worldaquatics.com/news/4179973/spectacular-locations-await-in-the-2025-world-aquatics-open-water-swimming-world-cup> [https://perma.cc/9UYC-K4TX]. The competition begins in Somabay, Egypt, then continues in Ibiza (April 25–26), Setbua (June 14–15), and ends in the Golfo Afranci (October 10–11). *Open Water Swimming*, WORLD AQUATICS, <https://www.worldaquatics.com/open-water/competitions> [https://perma.cc/NE6P-BMW7] (last visited Nov. 2, 2025).

105. *See* WORLD AQUATICS INTEGRITY CODE, RULES & REGULATIONS: OPEN WATER SWIMMING WORLD CUP 3–4 (2025), https://resources.fina.org/fina/document/2025/01/14/4edb401f-45a1-4caf-a155-7725b6931091/OWSWC-2025-Rules-Regulations_CLEAN.pdf [https://perma.cc/V7ML-WU6L].

106. The 4x1500 is considered a relay, meaning there are four swimmers, two male and two female, with each swimmer swimming a 1500-meter segment of the race. Teams are able to decide the order of their swimmers for the relay event. National federations can enter up to two teams in the relay; however, only one team would be eligible for medals and prize money. *Id.* at 4–5. It is not outlined in the rules who would be eligible for medals and prize money if a team were to enter more than one relay. I presume the team which finishes with a higher position would win the corresponding medals and prize money.

107. *See* WORLD AQUATICS FINANCIAL REPORT 2022, at 6, 16 (2022), <https://resources.fina.org/fina/document/2023/06/23/73e99383-46ee-4349-844e-10d5a94cc2fc/World-Aquatics-2022-Financial-report-final-signed-.pdf> [https://perma.cc/EAC2-NRR4].

108. *See id.* at 3–4; COMPETITION REGULATIONS, *supra* note 36, at 7.

109. FINANCIAL REPORT 2022, *supra* note 107, at 4, 6, 16.

competition logistics and prize distribution over athlete safety.¹¹⁰ As one swimmer put it, “[World Aquatics] makes money from these competitions[,] but they treat them like a backyard knock-around.”¹¹¹ Nowhere was this more apparent than in the final race of the 2010 FINA Open-Water Swimming World Cup in Fujairah, where Fran Crippen tragically died.¹¹²

2. *Financial pressures*

Financial incentives, point-based rankings, and penalties associated with withdrawals continue to make it more difficult for athletes to prioritize safety without risking their careers as professional athletes.¹¹³ The race in Fujairah was the final race of the 2010 FINA Open-Water Swimming World Cup.¹¹⁴ This meant that if any of the eighty-two athletes competing failed to finish the race, then they would potentially forfeit their chance at the World Cup prize money for the entire season.¹¹⁵ Though swimmers were technically not required to complete every race in the series, the final race was crucial, as it determined the overall standings and final prize money distribution.¹¹⁶

For Fran, the stakes were particularly high—he entered the race ranked second overall in this season’s World Cup.¹¹⁷ Fran’s performance in Fujairah would directly impact his final ranking and prize money for the entire season.¹¹⁸ Additionally, despite the “amazingly hot” water temperature in Fujairah at this race, withdrawal was not an option, as this event was mandatory if athletes wanted to be included in FINA’s final World Cup

110. See generally *id.* at 21 (describing how World Aquatics spent almost \$5.9 million on athlete prize money at the World Aquatics Championships compared to less than \$100,000 spent on athlete support).

111. Lord, *U.S. Swimmers Pull Out of Qatar Beach Games*, *supra* note 25.

112. See *supra* Introduction; discussion of open-water swimming incidents, *infra* Part IV.A.

113. See 2024 OPEN WATER SWIMMING MANUAL, *supra* note 59, at 72–76.

114. See Lord, *U.S. Swimmers Pull Out of Qatar Beach Games*, *supra* note 25.

115. *Id.*

116. See *id.*; see also Warner & Kemmerling, *supra* note 11, at 28 (“Despite the conditions, [the 10K] was a mandatory event that required the athletes to complete it in order to be included in FINA’s final World Cup rankings.”).

117. Lord, *U.S. Swimmers Pull Out of Qatar Beach Games*, *supra* note 25.

118. *Id.*

rankings.¹¹⁹ Beyond the immediate financial pressure at stake, World Aquatics' own rules also make it burdensome for athletes to withdraw without facing monetary penalties of not being included in the final World Cup rankings and potentially having to pay a withdrawal penalty fee of \$500.¹²⁰

The pressure to compete in potentially unsafe conditions has not gone away.¹²¹ The 2025 World Aquatics Open Water Swimming World Cup continues to structure ranking and prize distribution in a way that forces athletes to finish races regardless of conditions.¹²² In fact, each stop of the 2024 World Cup directly incentivized athletes to finish and accumulate as many points as possible in their races to win the highest monetary prize.¹²³ This system relies on two parallel ranking structures for the 10K.¹²⁴ There is an overall finish position ranking, where points are awarded based on the athlete's placement at the end of each 10K race, accumulating toward the final season standings.¹²⁵ The sprint ranking, however, awards points based on a swimmer's position at three designated points within the 10K, forming a secondary ranking separate from the final race placements.¹²⁶ This dual ranking system rewards both endurance and sprinting ability within the 10K.¹²⁷

Additionally, prize money for each 10K race totals at least \$30,000, with the first-place finisher getting \$3,500.¹²⁸ There are

119. Warner & Kemmerling, *supra* note 11, at 28; *see infra* Section IV.A, discussion of Fran's race in Fujairah and the water conditions.

120. Warner & Kemmerling, *supra* note 11, at 28; *see* 2024 OPEN WATER SWIMMING MANUAL, *supra* note 59, at 72.

121. *See generally* 2024 OPEN WATER SWIMMING MANUAL, *supra* note 59, at 72–76 (demonstrating the prize money awarded in competition).

122. *See id.*

123. *See id.*

124. *See id.* at 73–76.

125. *Id.* at 73.

126. *Id.* at 74.

127. *See* 2024 OPEN WATER SWIMMING MANUAL, *supra* note 59, at 73–74.

128. *Id.* at 74–75. Though this may not seem like a lot of money compared to sports such as professional basketball, where the beginning salary for the 2024–2025 season is over \$1,000,000, the World Cup is where many open-water swimmers primarily make their money. Ryan Phillips, *What's the Minimum NBA Salary for 2024–25?*, SPORTS ILLUSTRATED (Sep. 11, 2024), <https://www.si.com/nba/what-minimum-nba-salary-2024-25> [https://perma.cc/N4NE-DVG4].

also additional overall awards at the end of the season for the top overall, sprint, and junior leaders, offering prizes of \$50,000, \$10,000, and \$5,000, respectively, for first place—but only for those who compete in at least 75% of the season’s stops.¹²⁹ The result is a high-stakes environment where financial incentives and punitive regulations, such as the withdrawal penalty fee, pressure athletes to continue racing despite perilous conditions.¹³⁰

The World Cup’s structure remains largely unchanged from 2010.¹³¹ If the current point system and overall framework for the World Cup stay the same, additional safeguards must be put in place to allow athletes to compete at the highest level without feeling like they are compromising their safety.

B. Olympics

Marathon swimming has been an Olympic event since 2008, making the Paris 2024 Olympics only the fifth time it has been included in the Olympic program.¹³² The Paris Olympics included two marathon swimming events: the men’s and the women’s 10K.¹³³ Swimmers who achieved the Olympic “A” qualification standard in the 800-meter and 1500-meter freestyle pool events were eligible to compete in the 10K marathon swim.¹³⁴ The next Olympics, Los Angeles 2028, will serve as a

129. 2024 OPEN WATER SWIMMING MANUAL, *supra* note 59, at 75–76.

130. See Lord, *U.S. Swimmers Pull Out of Qatar Beach Games*, *supra* note 25. Athletes risked their lives, uncertain if race officials would intervene to pull swimmers from danger if needed. See *id.* One athlete at Fujairah even said that “[he has] been pulled out of a race once but probably should have been pulled out of four or five races for [his] own good . . . [but, he did not] want to fail and that’s what it means not to finish.” *Id.*

131. Compare 2024 OPEN WATER SWIMMING MANUAL, *supra* note 59, at 72, with USA SWIMMING, USA SWIMMING 2010 RULEBOOK 141 (2010), <https://websitedevsa.blob.core.windows.net/sitefinity/docs/default-source/rules-regulations/2010-rule-book.pdf> [<https://perma.cc/ZEJ9-PKBB>].

132. World Aquatics Comm’n Dep’t, *Marathon Swimming at the Paris 2024 | Qualified Athletes and NOC Quota Positions*, WORLD AQUATICS (Feb. 6, 2024, at 11:30 ET), <https://www.worldaquatics.com/news/3883994/marathon-swimming-paris-2024-olympic-games-qualified-athletes-and-noc-quota-positions-open-water-world-aquatics-championships-doha-2024> [<https://perma.cc/2328-KUWL>].

133. *Paris 2024 – Qualifications: Marathon Swimming*, *supra* note 81.

134. *Id.*

historic milestone—it is the first time Olympic marathon swimming will take place in U.S. waters.¹³⁵

1. Qualification

For the Paris 2024 Olympics, a total of forty-four swimmers, twenty-two men and twenty-two women, qualified to compete in the 10K open-water race.¹³⁶ The qualification process was structured through a series of global competitions, beginning a year prior in 2023, ensuring that the world's top open-water swimmers could earn their place in the Olympics.¹³⁷

Prior to the Paris 2024 Olympics, twenty-five swimmers per gender competed in the Olympic 10K race.¹³⁸ However, in 2022, World Aquatics and the IOC reduced that number to twenty-two swimmers per gender as part of a broader effort to cut costs across multiple Olympic sports.¹³⁹ Yet, this change did not necessarily reduce the number of swimmers allowed to compete in the 10K. The new qualification criteria for the Paris 2024 Olympics allowed swimmers who met the Olympic “A” standard time in either the 800-meter or 1500-meter freestyle to qualify

135. See Kristy Hutchings, *As 2028 Olympic Games Nears, Here's How Long Beach Is Prepping for the International Stage*, PRESS TELEGRAM (Feb. 8, 2025, at 17:13 PT), https://www.presstelegram.com/2025/02/05/as-2028-olympic-games-nears-heres-how-long-beach-is-prepping-for-the-international-stage/?preview_id=5231065&https://perma.cc/THM8-7R85. Marathon swimming was first introduced into the Olympics in 2008, and the 2028 Olympics will be the first time since then that Marathon swimming will take place in the United States at an Olympic Games. *Marathon Swimming*, *supra* note 49.

136. WORLD AQUATICS, QUALIFICATION SYSTEM – GAMES OF THE XXXIII OLYMPIAD – PARIS 2024: WORLD AQUATICS (AQUA) MARATHON SWIMMING 1 (2024) [hereinafter MARATHON SWIMMING QUALIFICATION CRITERIA – PARIS 2024], <https://stillmed.olympics.com/media/Documents/Olympic-Games/Paris-2024/Paris2024-QS-FINA-MarathonSwimming.pdfhttps://perma.cc/XCU2-VUKQ>.

137. See *Paris 2024 – Qualifications: Marathon Swimming*, *supra* note 81. Despite the increasing popularity of the sport, Team USA has won only one Olympic medal in marathon swimming since its debut at the 2008 Beijing Games—Haley Anderson's silver medal in the 2012 London Games. Karen Crouse, *Haley Anderson Wins Silver in 10K Swim*, N.Y. TIMES (Aug. 9, 2012, at 13:11 ET), <https://archive.nytimes.com/london2012.blogs.nytimes.com/2012/08/09/haley-anderson-wins-silver-in-10k-swim/> [https://perma.cc/QF32-5J9N].

138. Asterios Daldogiannis, *Revamped Rules, New Contenders: How Paris 2024 Is Shaking Up Olympic Open Water Swimming*, WOWSA (June 27, 2024), <https://www.openwaterswimming.com/revamped-rules-new-contenders-how-paris-2024-is-shaking-up-olympic-open-water-swimming/> [https://perma.cc/33D5-VFVD].

139. *Id.*

for the 10K marathon swim (provided their country had not already qualified two open-water swimmers).¹⁴⁰ As a result, this “A” pool qualification led to more than twenty-two swimmers per gender competing in the 10K marathon swimming event at the 2024 Paris Games.¹⁴¹

2. *Katie Grimes’ 2024 open-water swimming Olympic debut in the Seine River*

An element of technical unpredictability was added to marathon swimming in the Olympics with the “A” qualification standard, as “fast[er]” but less experienced pool swimmers were now eligible to compete in the 10K marathon swim at the Olympics.¹⁴² A prime example is Katie Grimes.¹⁴³ At just eighteen years old, Katie qualified for the marathon swimming event at the Paris 2024 Olympics by placing third in the women’s 10K at the 2023 World Aquatics Championships in Fukuoka, Japan.¹⁴⁴ Katie became the first U.S. swimmer to compete in both an open-water and pool event in the same Olympics.¹⁴⁵

140. *Paris 2024 – Qualifications: Marathon Swimming*, *supra* note 81.

141. Torin Koos, *Marathon Swimming at the Paris 2024 Olympic Games | Confirmed Athletes*, WORLD AQUATICS (July 9, 2024, at 14:50 ET), <https://www.worldaquatics.com/news/4054590/marathon-swimming-open-water-world-aquatics-paris-2024-olympic-games-confirmed-athletes> [<https://perma.cc/92PV-J4MS>]; *see also Paris 2024 Marathon Swimming Men’s 10KM Results*, OLYMPIC GAMES PARIS 2024, <https://www.olympics.com/en/olympic-games/paris-2024/results/marathon-swimming/men-10km> [<https://perma.cc/6CSB-75WK>] (last visited Nov. 2, 2025) (listing results of the Paris 2024 Men’s Marathon Swimming event). Additionally, the host country automatically qualifies for one quota spot for men and one quota spot for women, meaning that the United States will have at least two marathon swimmers guaranteed to compete in the 10K at the 2028 Los Angeles Olympics. MARATHON SWIMMING QUALIFICATION CRITERIA – PARIS 2024, *supra* note 136, at 1, 3.

142. *See Daldogiannis*, *supra* note 138.

143. *See Katie Grimes*, TEAM USA, <https://www.teamusa.com/profiles/katie-grimes> [<https://perma.cc/WDQ7-5KDG>] (last visited Nov. 2, 2025).

144. *See Koos*, *supra* note 141. *World Aquatics Championships – Fukuoka 2023*, WORLD AQUATICS, <https://www.worldaquatics.com/competitions/1/world-aquatics-championships-fukuoka-2023/results?disciplines=&event=f41e6e2c-39d1-4267-a2ad-ca1446673315&unit=final> [<https://perma.cc/K9E7-HEU8>] (last visited Nov. 2, 2025). This win made Katie the first American athlete in any sport to qualify for the Paris Olympics. Andrew Binner, *Katie Grimes: The ‘Old Soul’ Chasing Double Olympic Glory*, OLYMPICS (June 17, 2024, at 19:07 ET), <https://www.olympics.com/en/news/katie-grimes-old-soul-chasing-double-olympic-glory-swimming-interview> [<https://perma.cc/8WDE-CBN3>].

145. Michelle R. Martinelli, *‘Fearless’ Katie Grimes Is Team USA’s Most Versatile Swimmer and Ready to Take on the Olympic Pool and Seine River*, USA TODAY SPORTS (July 24, 2024, at 11:00 ET),

Even though Katie is the “best female open water swimmer in the United States,” winning the national title in the women’s 10K for the third straight year in 2024, her open-water swimming experience in the Seine River at the 2024 Paris Games proved vastly more difficult, and different, from her races in the pool.¹⁴⁶ Katie finished the 10K marathon swim in fifteenth place, about three minutes behind Sharon Von Rouwendaal, a two-time Olympic champion in the event.¹⁴⁷ Katie explained that the race conditions in the Seine were brutal, saying it was “the hardest thing [she had] ever done, ever.”¹⁴⁸ The river’s strong current of over 500 cubic meters per second, as opposed to the river’s normal flow of 100–150 cubic meters per second, made the race unpredictably difficult, something she admitted she was not used to.¹⁴⁹ Even at the start, Katie struggled with positioning, saying the race was “really bunched up, and [she] couldn’t really see what was going on in front of [her],” causing her to fall behind the field by a minute after the first lap of the race.¹⁵⁰ The Seine’s strong current also required Katie and others to adjust stroke rates and strategies on the fly, with the course structured so that six laps were with the current and six were

<https://ftw.usatoday.com/story/sports/olympics/2024/07/24/paris-olympics-swimming-katie-grimes-usa-pool-open-water-seine/74526366007/> [https://perma.cc/BH9J-QFRP]. Katie already won a silver medal in a pool event, the 400-meter individual medley, at the 2024 Paris Games. *Katie Grimes*, *supra* note 143.

146. James Sutherland, *Katie Grimes Wins Third Straight U.S. Open Water National Title in Women’s 10KM*, SWIMSWAM (May 3, 2024), <https://swimswam.com/katie-grimes-wins-third-straight-u-s-open-water-national-title-in-womens-10km/> [https://perma.cc/F4WP-KFC9]; see Peggy Shinn, *An Olympic Silver Medalist in the Pool, Katie Grimes Finished Top 15 in the Marathon Swim*, TEAM USA (Aug. 8, 2024, at 07:21 ET), <https://www.teamusa.com/news/2024/august/08/an-olympic-silver-medalist-in-the-pool-katie-grimes-finishes-top-15-in-the-marathon-swim> [https://perma.cc/2GHF-CTEB].

147. Shinn, *supra* note 146.

148. *Id.*

149. *Id.*; see also Riley Overend, *Paris Olympics Opening Ceremony Threatened by Speed of Seine River*, SWIMSWAM (July 13, 2024), <https://swimswam.com/paris-olympic-opening-ceremony-threatened-by-speed-of-seine-river/> [https://perma.cc/AF6Y-4YEP] (finding that the Seine had a current over 500 cubic meters per second during the Paris Olympic ceremony, whereas the normal flow rate is between 100 and 150 cubic meters per second during the summertime).

150. Shinn, *supra* note 146.

against it.¹⁵¹ To put this into perspective, Katie said that it took “twice as long to come back up [river] as it did going down.”¹⁵²

The Paris 2024 Olympics demonstrated that elite-level swimming speed alone is not enough to guarantee success in marathon swimming. In fact, new regulations and safety features should not prioritize elite swimming speed over the safety of athletes. While the decision by World Aquatics and the IOC to allow pool swimmers to qualify through the Olympic “A” standard opened the door for more athletes to compete in the marathon swim, it also highlighted the critical gap that exists between pool athletes and open-water swimming athletes.¹⁵³ Even Katie Grimes—an experienced open-water competitor with multiple World Aquatics Championships and the 2024 Open Water National Title under her belt—struggled with the unpredictable and extreme conditions of the Seine River in the 10K marathon swim.¹⁵⁴

151. See Pierre Sarniguet, *Paris 2024 Games: Marathon Swimming in the Heart of Paris*, OLYMPICS (July 29, 2024, at 17:18 ET), <https://www.olympics.com/en/news/paris-2024-games-marathon-swimming-heart-paris> [https://perma.cc/74RG-VNY5]; John Lohn, *Paris Olympics: Open-Water Swimmers Enter Seine for Training Session; Concerns Remain*, SWIMMING WORLD (Aug. 7, 2024, at 10:02 ET), <https://www.swimmingworldmagazine.com/news/paris-olympics-open-water-swimmers-enter-seine-for-training-session/> [https://perma.cc/2V88-XXXD].

152. Shinn, *supra* note 146.

153. See Binner, *supra* note 144. Katie Grimes describes how different open-water and pool events are, saying that “[o]pen water swimming is a lot more strategic and there’s a lot more variables like the course and the weather. It’s a free-for-all with no lanes, whereas a pool race is so controlled – almost the same thing every time.” *Id.* She also went on to say that “[t]wo different mentalities are needed, so you could say it’s like a split athlete.” *Id.*

154. See *Katie Grimes Wins 10K Title to Start 2024 Open Water National Championships*, USA SWIMMING (May 4, 2024), <https://www.usaswimming.org/news/2024/05/04/katie-grimes-wins-10k-title-to-start-2024-open-water-national-championships> [https://perma.cc/J73A-NJE8] (last visited Nov. 2, 2025); *Katie Grimes*, WORLD AQUATICS [hereinafter *Katie Grimes Awards*], <https://www.worldaquatics.com/athletes/1415844/katie-grimes/profile> [https://perma.cc/3SDQ-GGSP] (last visited Nov. 2, 2025); see also SWIMMING WORLD, *Morning Swim Show Interview with Fran Crippen and Bill Rose*, (Youtube, May 23, 2017), <https://www.youtube.com/watch?v=wM6aqH5aM1A&t=30s>. Fran Crippen’s coach at Mission Viejo said that the difference between a great distance pool swimmer and a great open-water swimmer is how a swimmer is “able to handle themselves in different variables along the way.” *Id.* at 08:10–08:14. In open-water swimming, it is “whatever happens happens and you have to deal with it and adjust all the variables.” *Id.* at 08:28–08:34. This is very different from swimming in a pool where you know exactly when the turn is coming, where the lane lines are, how many strokes it takes you to swim each length, and how many laps you will be racing.

Thus, the addition of the Olympic “A” qualification time adds a new layer of complexity and safety concerns to a race with already high stakes by allowing swimmers who may not be well versed in open-water swimming to potentially compete in the 10K marathon swim. As the Los Angeles 2028 Olympics approach, it begs the question—should Olympic qualification prioritize speed, or should it ensure that all athletes have the necessary open-water experience to handle the event’s extreme conditions? Or even, is there a role for USA Swimming to implement changes that better prepare athletes to compete safely—whether through modified selection criteria, enhanced training programs, stricter racing standards, or perhaps a change to USA Swimming’s own rules and regulations?

IV. OPEN-WATER SWIMMING INCIDENTS

Despite the growing popularity of the sport, open-water swimming’s safety regulations remain inadequate.¹⁵⁵ Prior to Fran Crippen’s death in 2010, FINA had no specific regulations governing maximum water temperatures for open-water swimming competitions.¹⁵⁶ A post-race investigation of Fran Crippen’s race revealed that race organizers failed to monitor swimmers properly, had poor communication, had no contingency plans, and had insufficient safety personnel both in the water and onshore.¹⁵⁷ Unfortunately, the findings of the investigation

155. See, e.g., Michelle R. Martinelli, *Seine Water Still Isn’t Safe for Swimmers, Frustrating U.S. Olympics*, USA TODAY (July 12, 2024, at 09:59 ET), <https://www.usatoday.com/story/sports/olympics/2024/07/03/paris-olympics-seine-water-quality-un-safe/74274068007/> [https://perma.cc/WH4Z-579E]. A tragic illustration of these ongoing safety failures occurred last summer in August of 2024, when Lazar Đukić, an elite CrossFit athlete, drowned during the open-water swim portion of the CrossFit Games. Lazar was a strong swimmer, yet he vanished near the end of the race. Calum Marsh, *The Death of a Crossfit Athlete*, ROLLING STONE (June 14, 2025), <https://www.rollingstone.com/culture/culture-features/crossfit-death-lazar-dukic-1235357644/> [https://perma.cc/SPG4-HUDJ]. This is just one of the numerous incidents showing how inadequate safety measures can have fatal consequences, even for the most elite athletes.

156. See Dampf et al., *supra* note 22.

157. See Wendt & Miller, *supra* note 2, at 98–99 (discussing how Fujairah was a disaster waiting to happen, and it did not result in any changes); Bonnie D. Ford, *UAE Bid ‘Completely Inappropriate’*, ESPN (Oct. 8, 2014, at 20:28 ET),

uncovered patterns that the entire sport of open-water swimming would witness repeat in future competitions.¹⁵⁸

Section A will discuss Fran Crippen's race in Fujairah, where Fran Crippen lost his life due to extreme water temperatures. Section B will then turn to Christine Jennings' experience in the same 2010 race, where a lack of sufficient safety personnel left her alone despite her clear signs of distress. Section C demonstrates how the failure to implement meaningful reforms at the 2011 FINA World Championships in Shanghai led to dangerously hot racing conditions, causing multiple athletes to withdraw due to severe exhaustion. Section D further illustrates the ongoing risks of extreme water temperatures, forcing Canada and U.S. teams to withdraw from the 2019 ANOC World Beach Games in Doha. Finally, Section E highlights the continued willingness of athletes, such as Ivan Puskovitch, to compete despite hazardous conditions at the 2024 Paris Olympics.

A. Fran Crippen's Race in Fujairah (2010)

Many things contributed to the "greatest tragedy in the history of swimming."¹⁵⁹ Originally scheduled to take place in Sharjah, UAE, the FINA 10K World Cup was unexpectedly relocated to Fujairah just days before the competition, with no clear explanation as to why.¹⁶⁰ This relocation required a two-hour bus ride from the swimmers' hotel.¹⁶¹ This last-minute change left event organizers scrambling to prepare for the international competition.¹⁶² The night before the race, coaches, swimmers, and managers met for a pre-race technical meeting conducted by FINA.¹⁶³ These meetings typically lasted ninety minutes to address critical issues, such as course layout, feeding

https://www.espn.com/olympics/swimming/story/_/id/11666904/new-uae-open-water-race-bid-draws-criticism-wake-fran-crippen-tragedy [<https://perma.cc/BA84-A4MB>].

158. See Lord, *U.S. Swimmers Pull Out of Qatar Beach Games*, *supra* note 25.

159. Warner & Kemmerling, *supra* note 11, at 29.

160. Lord, *U.S. Swimmers Pull Out of Qatar Beach Games*, *supra* note 25.

161. Warner & Kemmerling, *supra* note 11, at 28.

162. See Lord, *U.S. Swimmers Pull Out of Qatar Beach Games*, *supra* note 25.

163. *Id.*

stations, and water temperatures.¹⁶⁴ However, the meeting on October 22nd ended abruptly after only thirty minutes, despite many coaches expressing concerns and questions about the course, safety, and water temperatures.¹⁶⁵ At this meeting, little English was spoken; the U.S. team lacked an official coach, and many coaches' concerns were not addressed.¹⁶⁶ As one event organizer said, answering everyone's questions "could go on all night."¹⁶⁷

Despite these concerns, the head of the UAE Swim Federation, Ayman Saad, denied that safety was overlooked the morning of October 23rd, 2010, saying "nobody had complained about the temperature before the race" and that there "had been adequate help at hand."¹⁶⁸ Yet, there was also no official coach for the American athletes competing.¹⁶⁹ The only Americans present were Jack Fabian, father of swimmer Eva Fabian,¹⁷⁰ and Alex Meyer, Fran Crippen's best friend, who were both at the race for support, not in any official USA Swimming capacity.¹⁷¹

That morning, the water temperature in Fujairah was recorded at 29° Celsius (85° Fahrenheit) and had risen to 30–31° Celsius (86–88° Fahrenheit) at the time of the race.¹⁷² A typical

164. Warner & Kemmerling, *supra* note 11, at 28.

165. Lord, *U.S. Swimmers Pull Out of Qatar Beach Games*, *supra* note 25; see Wendt & Miller, *supra* note 2, at 72 (discussing how there were disagreements as to the location of safety boats and which ones the swimmers were to follow during the race).

166. Lord, *U.S. Swimmers Pull Out of Qatar Beach Games*, *supra* note 25.

167. *Id.*

168. Zacharias, *supra* note 4.

169. Lord, *U.S. Swimmers Pull Out of Qatar Beach Games*, *supra* note 25.

170. Eva Fabian was taken to the hospital for heat exhaustion along with Christine Jennings. See discussion *infra* Section IV.B.

171. See Lord, *U.S. Swimmers Pull Out of Qatar Beach Games*, *supra* note 25; Jacob D.H. Feldman, *Conquering the Open Water: Alex Meyer '10 Swims for the US and for a Lost Friend*, HARV. CRIMSON (July 26, 2012), <https://www.thecrimson.com/column/london-bound/article/2012/7/26/harvard-london-olympics-austin-meyer-10k-open-water/> [<https://perma.cc/VB7W-BPG5>].

Despite having to withdraw from the race because of a recent appendectomy, Meyer still made the trip to Dubai to support his friend, Crippen. *Id.* But when Meyer did not see his friend at the finish line, he immediately knew something was wrong. *Id.*

172. *Fujairah's Race Conditions*, *supra* note 18 (describing how the high temperatures caused many swimmers to suffer from swollen fingers and toes, dehydration, and even confusion following the race).

lap pool is held at 26° Celsius (79° Fahrenheit).¹⁷³ Further, in August, the average water temperature in the ocean in Jersey City, close to where Fran was from, is 23° Celsius (74° Fahrenheit).¹⁷⁴ Thus, even at a water temperature of 82° Fahrenheit, performances inevitably start to suffer in a lap pool, and coaches will hear complaints from swimmers that “the water is too hot.”¹⁷⁵ Now, imagine if the temperature of the pool was 87° Fahrenheit *and* add in the fact that salt water feels warmer than fresh water.¹⁷⁶ Now consider racing for two hours in salt water that feels like 89–90° Fahrenheit while in the ocean.¹⁷⁷ These were the water conditions that Fran faced in Fujairah on the morning of October 23, 2010.¹⁷⁸

“Having a 10K (2 hour) race in 86 degree water is criminal,” said oncologist Larry Weisenthal upon hearing about Fran’s death in Fujairah.¹⁷⁹ Experts say that due to the heat, Fran’s body was no longer able to sweat, and, given the conditions, he passed out and drowned.¹⁸⁰ Autopsy reports confirmed that the water temperatures over 86° Fahrenheit contributed to Fran’s heat exhaustion.¹⁸¹ Fran’s death signaled to FINA that there

173. *Lap Swim Schedule*, IND. U. INDIANAPOLIS, <https://natatorium.indianapolis.iu.edu/lap-swim-and-membership/lap-swim-schedule.html> [<https://perma.cc/NCG8-JQH4>] (last visited Nov. 2, 2025).

174. *Jersey City Average August Sea Temperature*, SEA TEMPERATURE, <https://www.seatemperature.org/north-america/united-states/jersey-city-august.htm> [<https://perma.cc/HGL2-MS4M>] (last visited Nov. 2, 2025).

175. Steven Munatones, *Why 31 C in Open Water Swimming? Part 2 – The Dangers of Hot Water Swimming*, SWIMMING WORLD (Oct. 28, 2012, at 10:44 ET), <https://www.swimmingworldmagazine.com/news/why-31-c-in-open-water-swimming-part-2-the-dangers-of-hot-water-swimming/> [<https://perma.cc/BS2V-K2BC>].

176. *Id.*

177. *Id.*

178. *See id.*; *Fujairah’s Race Conditions*, *supra* note 18 (describing race conditions and negative effects on competitors).

179. Lisa Dillman, *Doctor on Fran Crippen Case: ‘No Such Thing as Dying of Exhaustion’*, L.A. TIMES (Oct. 25, 2010, at 15:08 ET), <https://www.latimes.com/archives/blogs/sports-now/story/2010-10-25/doctor-on-fran-crippen-case-no-such-thing-as-dying-of-exhaustion> [<https://perma.cc/M6X4-4KKN>].

180. Lord, *U.S. Swimmers Pull Out of Qatar Beach Games*, *supra* note 25.

181. *Id.*; *see also* Samuel Chalmers, Ollie Jay, Iñigo Mujika & Gregory Shaw, *Thermal Strain During Open-Water Swimming Competition in Warm Water Environments*, 12 FRONTIERS PHYSIOLOGY 1, 1–2 (2021) (attributing Fran Crippen’s passing to the lack of FINA policies defining maximal temperatures that pose “extreme risk of exertional heat illness”).

needed to be a change.¹⁸² This was the first time an athlete lost their life in a FINA-sanctioned event.¹⁸³

The organizers of the 2010 FINA World Cup should have been prepared for a situation like Fran Crippen's—but they were not.¹⁸⁴ Despite having similar conditions the previous year, the organizers failed to adapt or improve any safety protocols.¹⁸⁵ The head of the UAE Swim Federation even said that “[l]ast year [in 2009] we organi[z]ed the race in the same conditions—and maybe it was worse. It was October 9 and hotter than now.”¹⁸⁶ Yet, no adjustments were made from 2009 to 2010, and the race moved forward despite the water temperatures reaching 31° Celsius (87.8° Fahrenheit).¹⁸⁷

While the 2010 USA Swimming Rulebook recommended a minimum water temperature, the international open-water competitions had no specific upper-temperature limit at the time.¹⁸⁸ The lack of a maximum temperature in place for open-water events left athletes like Fran vulnerable to heat conditions without any clear protection.¹⁸⁹ On the other hand, USA Swimming did specify limitations on indoor competitions, imposing a maximum temperature of 28° Celsius (82.4° Fahrenheit) and thus recognizing the dangers of heat stress in regulated, controlled environments.¹⁹⁰ This disparity illustrates a clear oversight: while protections existed for colder temperatures in open-water races and heat in indoor races, the failure to

182. See generally Warner & Kemmerling, *supra* note 11, at 25 (describing Fran's death as “the greatest tragedy in swimming history”).

183. *Id.* at 29 (“Until Oct. 23, 2010, no athlete had ever lost his or her life in a FINA event.”).

184. See Rieder, *supra* note 27; Wendt & Miller, *supra* note 2, at 99 (discussing how FINA “should have addressed the heat issues and should have been better prepared”).

185. Zacharias, *supra* note 4.

186. *Id.*; see also Lord, *U.S. Swimmers Pull Out of Qatar Beach Games*, *supra* note 25 (“FINA did not sanction the UAE, while Ayman Saad, the [] executive director of the UAE swimming federation, was subsequently added to FINA's technical Open water Swimming Committee.”).

187. Zacharias, *supra* note 4.

188. USA SWIMMING, 2010 RULEBOOK 147 (2010), <https://websitedevsa.blob.core.windows.net/sitefinity/docs/default-source/rules-regulations/2010-rule-book.pdf> [<https://perma.cc/9MUB-GM65>]. The minimum water temperature was 16 degrees Celsius (about 60 degrees Fahrenheit). *Id.*

189. See *id.*

190. *Id.* at 43.

establish a maximum temperature limit in open-water competitions left athletes exposed to unsafe conditions, such as those that directly contributed to Fran's tragic death.¹⁹¹

FINA now mandates that water temperatures *should* be maintained between 16° Celsius and 31° Celsius (60.8–87.8° Fahrenheit), checked two hours before the race and at three points around the course at a depth of forty centimeters.¹⁹² The temperature checks should also be done in the presence of a commission made up of a referee, a member of the organizing committee, and one coach from the teams present (designated at the technical meeting).¹⁹³ The final temperature is averaged from the three readings.¹⁹⁴ However, as this Note will show, numerous instances still highlight continued gaps in enforcing this water condition and in broader athlete protection measures in open-water swimming.

Fran's death exposed critical gaps in the safety protocols governing open-water swimming, particularly within USA Swimming's deference to World Aquatics when races take place internationally. The lack of substantial reform since that tragic day is a failure that continues to put even the highest caliber of athletes at risk.¹⁹⁵ Fran's sister Maddy and his mother put it clearly: "no matter if it's a swim meet for 4-year-olds or 40-year-olds, there shouldn't even be a question of drowning."¹⁹⁶ As the NGB for competitive swimming, USA Swimming has a duty to implement stricter safety measures to protect its athletes and prevent future tragedies domestically—both to protect its swimmers and to set a precedent for stronger guidelines abroad.¹⁹⁷

191. See Warner & Kemmerling, *supra* note 11, at 28–29; Chalmers et al., *supra* note 181, at 1–2.

192. COMPETITION REGULATIONS, *supra* note 36, at 116.

193. *Id.*

194. *Id.*

195. See Ford, *supra* note 24.

196. Amy Shipley, *Swimmer Speaks Out Regarding the Death of Crippen*, WASH. POST. (Oct. 25, 2010), <https://wapo.st/474uIkC> [<https://perma.cc/QK2C-6EU6>].

197. See *About USA Swimming*, USA SWIMMING, <https://www.usaswimming.org/about-usas/organization/overview#overview> [<https://perma.cc/YXQ8-JMAM>] (last visited Nov. 2, 2025).

B. Christine Jennings' Race in Fujairah (2010)

Though Fran's death was the first death in any FINA event, three other swimmers were also taken to a hospital after the same 10K and treated for dehydration and heat exhaustion.¹⁹⁸ One of these three swimmers, Christine Jennings, just twenty-three years old, said that she vomited several times in the water, became dizzy, and veered off the course.¹⁹⁹ She even noted how she felt nauseated just twenty-five meters (about fifteen seconds) into the race.²⁰⁰ Afraid she would black out during the race, Christine turned and swam on her back with one arm in the air to signal her distress to the safety boats that were supposed to follow the swimmers close-by.²⁰¹ Yet, no one responded to Christine's call for help.²⁰² Upon barely finishing the race, Christine was taken to a hospital.²⁰³

Christine went on to say that "[the race] was a disaster . . . I'm floating on my back for several minutes, thinking '[w]hy isn't anybody checking on me?'"²⁰⁴ Though there were two safety boats and observers on jet skis, and a feeding dock that held about twenty coaches or feeders, the minimal amount of safety personnel was not enough to ensure the safety of the eighty-two swimmers competing.²⁰⁵ In fact, the 2010 USA Swimming Rules did not specify a required number of safety

198. See *U.S. Swimmer Crippen Dies in Open Water Race*, CBC SPORTS (Oct. 23, 2010), <https://www.cbc.ca/sports/u-s-swimmer-crippen-dies-in-open-water-race-1.874433> [<https://perma.cc/GP9Y-FHGM>]; *U.S. Swimmer Fran Crippen Dies of "Overexertion"*, CBS NEWS (Oct. 25, 2010, at 05:17 ET), <https://www.cbsnews.com/news/us-swimmer-fran-crippen-dies-of-overexertion/> [<https://perma.cc/3GYV-76GV>]. The three other swimmers who were taken to the hospital consisted of two American women, Christine Jennings and Eva Fabian, and one Brazilian man, Allan Do Carmo. Shipley, *supra* note 196. Eva Fabian's father, Jack Fabian, was also at the race, but only for support, and not in any official USA Swimming capacity. See discussion *infra* Section IV.A.

199. Zacharias, *supra* note 4.

200. Anna Zacharias, *US Swimmer Recalls Day of Tragedy in Fujairah Race*, THE NAT'L (Oct. 28, 2010), <https://www.thenationalnews.com/uae/us-swimmer-recalls-day-of-tragedy-in-fujairah-race-1.578044> [<https://perma.cc/7CMD-ZKA3>]. For context, 25 meters is the length of a typical lap swimming pool and it takes the average swimmer about 15 seconds to swim 25 meters.

201. Zacharias, *supra* note 4.

202. Shipley, *supra* note 196.

203. *Id.*

204. *Id.*

205. Warner & Kemmerling, *supra* note 11, at 28.

boats, jet skis, or safety personnel for open-water races, thus leaving the level of safety precautions up to the event organizers in Fujairah.²⁰⁶ This situation highlighted the inadequate safety measures in place and the need for more effective oversight and responsive support systems.

C. 2011 FINA World Championships

Less than a year after the tragedy in Fujairah, FINA hosted the Fourteenth FINA World Championships in Shanghai, China.²⁰⁷ This Championship featured world-class athletes such as Petar Stoychev, the English Channel world record holder, and Ana Marcela Cunha, the youngest-ever swimmer to participate in the inaugural women's 10K open-water race in the 2008 Beijing Games.²⁰⁸ Twenty athletes came from eighteen countries, ready to race.²⁰⁹ Yet, the circumstances surrounding the last race of the competition, the 25K, created an unbearable environment for even world-class athletes.²¹⁰

Throughout the week, the water temperature stayed around 29° Celsius (about 84° Fahrenheit).²¹¹ However, it rose to 31° Celsius (about 88° Fahrenheit) during the early stages of the 25K.²¹² At this point, there was not an official maximum water temperature regulation in place.²¹³ However, if the water

206. COMPETITION REGULATIONS, *supra* note 36, at 123.

207. 14th FINA World Championships 2011, WORLD AQUATICS, <https://www.worldaquatics.com/competitions/517/14th-fina-world-championships-2011> [<https://perma.cc/TD7R-6G83>] (last visited Nov. 2, 2025).

208. Steve Munatones, *FINA World Championships, Open Water: First-Hand Account of Controversial 25Ks; Race Should Have Been Called*, SWIMMING WORLD (July 23, 2011, at 16:52 ET) [hereinafter Munatones, *Controversial 25K*], <https://www.swimmingworldmagazine.com/news/fina-world-championships-open-water-first-hand-account-of-controversial-25ks-race-should-have-been-called/> [<https://perma.cc/AFC7-NZXL>]; see Steven Munatones, *Ana Marcela Cunha, From 2008 to 2020*, WOWSA (July 14, 2019), <https://www.openwaterswimming.com/ana-marcela-cunha-from-2008-to-2020/> [<https://perma.cc/4ZRW-9695>].

209. Munatones, *Controversial 25K*, *supra* note 208.

210. *See id.*

211. *Id.*

212. *Id.*

213. *See USA Swimming Institutes Open Water Maximum Temperature Requirement*, SWIMMING WORLD (Sep. 17, 2011, at 14:37 ET), <https://www.swimmingworldmagazine.com/news/usa-swimming-institutes-open-water-maximum-temperature-requirement/> [<https://perma.cc/9FAX-HTBH>].

temperature rose to 31° Celsius, it was presumed that the race would likely end.²¹⁴

Petar Stoychev, the most experienced athlete in the field, even said that he “picked up the pace when the water temperature was increasing to 31 because [he] thought the race might be shortened.”²¹⁵ However, the 31° Celsius mark was a discretionary guideline judged by FINA, not a rule.²¹⁶ Thus, despite complaints from athletes and coaches, FINA allowed the race to continue.²¹⁷ The event organizers tried to mitigate risks by starting the race two hours early at 6:00 am local time, but it was of no use.²¹⁸ Less than one year after the tragedy in Fujairah, FINA had the ability here to show that the safety of athletes comes first, but they failed.²¹⁹ Allowing the race to continue caused world champions to either be pulled or drop out mid-race and others to skip the event altogether due to the hazardous conditions.²²⁰

Alex Meyer, best friend and teammate of Fran, refused to race, saying “[w]hat’s the point in making rules and recommendations if you’re just going to blow them off at events like this?”²²¹ His anger reflected a broader sentiment that FINA had failed to learn from Fran’s death a year prior, feeling once again that athletes and coaches were forced to choose between competing and their own safety.²²²

Yet, FINA maintained its decision and denied any allegations of dangerous conditions.²²³ FINA’s executive director

214. See Munatones, *Controversial 25K*, *supra* note 208.

215. *Id.*

216. *Id.*

217. *See id.*

218. *Organisers Criticized for Allowing Races in ‘Too Hot and Dangerous’ Water*, BBC: SPORT (July 23, 2011), <https://www.bbc.com/sport/swimming/14260705> [<https://perma.cc/37DN-CPAY>].

219. See Munatones, *Controversial 25K*, *supra* note 208.

220. *Id.* World champion Valerio Cherio was pulled out from the race. *Id.* Alex Meyer and Linsy Heister skipped the race due to the hazardous conditions. *Id.*

221. *Organisers Criticized for Allowing Races in ‘Too Hot and Dangerous’ Water*, *supra* note 218; *see infra* Section V.C, discussion of Alex Meyer’s race in 2010 at the Pan Pacific Championship where he had to withdraw from the race mid-way through.

222. *Organisers Criticized for Allowing Races in ‘Too Hot and Dangerous’ Water*, *supra* note 218.

223. *See id.*

acknowledged that it is normal for swimmers to be pulled out of 25K races and that this race was completed in a “perfect manner.”²²⁴ While FINA and the IOC began researching improved temperature guidelines, FINA’s actions in Shanghai left many athletes feeling that their safety concerns were ignored.²²⁵

D. 2019 Association of National Olympic Committees World Beach Games

The 2019 Association of National Olympic Committees (ANOC) World Beach Games, in Doha, Qatar, similarly highlighted critical safety concerns in open-water swimming due to excessively high water temperatures.²²⁶ Held in October, the unusually warm sea temperatures reached up to 32° Celsius (about 90° Fahrenheit).²²⁷ This temperature exceeded FINA’s maximum temperature of 31° Celsius, and though Federations were advised ahead of time of this possibility, the event proceeded without adjustments.²²⁸

Many swimmers withdrew for their safety,²²⁹ but why should that burden fall on the athletes? They are trained to push themselves through extreme conditions, it is the governing bodies who should be enforcing proper safeguards.²³⁰ Canada Swimming’s CEO Ahmed El-Awadi echoed this concern, stating that “[a]thlete safety will always be of paramount importance to our team, therefore Team Canada has no option but

224. *Id.*

225. *See id.*

226. Dan D’Addona, *Canada Open Water Team Pulls Out of World Beach Games*, SWIMMING WORLD (Oct. 12, 2019, at 11:02 ET), <https://www.swimmingworldmagazine.com/news/canada-open-water-team-pulls-out-of-world-beach-games/> [https://perma.cc/WBJ6-F5AT].

227. Craig Lord, *Fran Crippen Commemoration Day Marked By “For Safety’s Sake” Plea from Swimmer’s Parents*, SWIMMING WORLD (Oct. 23, 2019, at 5:09 ET) [hereinafter Lord, *For Safety’s Sake*], <https://www.swimmingworldmagazine.com/news/fran-crippen-commemoration-day-marked-by-for-safety-sake-plea-from-swimmers-parents/> [https://perma.cc/2ZC6-5JJ3].

228. D’Addona, *supra* note 226.

229. *See* Braden Keith, *Swimming Canada Joins US in Withdrawing Swimmers from 2019 Beach Games*, SWIMSWAM (Oct. 12, 2019), <https://swimswam.com/swimming-canada-joins-us-in-withdrawing-swimmers-from-2019-beach-games/> [https://perma.cc/5REB-4XU9].

230. *See id.*; Chalmers et al., *supra* note 181, at 1–2.

to withdraw our swimmers for their own personal safety.”²³¹ This decision was particularly significant for Canada, which had not yet qualified any open-water swimmers for the upcoming 2020 Olympic Games.²³² Despite a strong showing by Canadian swimmer Eric Hedlin, a 2019 World Championships bronze medalist, the decision to withdraw meant that Canada was relying entirely on the Olympic qualifying event in 2020 to earn spots for Tokyo.²³³ However, with such dangerous conditions, Canada’s athletes, like many others, prioritized safety over competition.²³⁴ Even the top two American women open-water swimmers, Ashley Twichell and Haley Anderson, chose to withdraw due to concerns that water temperatures violated safety limits set after Fran Crippen’s death.²³⁵

E. Ivan Puskovitch’s 2024 Open-Water Swimming Olympic Debut in the Seine River

The 2024 Paris Olympics brought renewed scrutiny to open-water swimming safety as swimmers plunged into the Seine River—a body of water that had been off-limits for swimming for over a century due to pollution.²³⁶ Despite the city’s one billion euro investment to reduce stormwater contamination of the Seine, the river’s quality remained inconsistent in the days leading up to the competition.²³⁷ To meet Olympic standards, organizers implemented a massive stormwater tank beneath the

231. D’Addona, *supra* note 226.

232. Keith, *supra* note 229. The two U.S. swimmers, on the other hand, were the American entries for the 10K race for the Olympic Games, and thus they had already solidified their Olympic spots for the 2020 Olympic Games. *Id.*

233. *See id.*

234. D’Addona, *supra* note 226.

235. Lord, *For Safety’s Sake*, *supra* note 227.

236. The Associated Press, *Will the Seine Be Clean Enough to Swim in by the Olympics? Not Even the Experts Know*, NPR: SPORTS (July 16, 2024, at 02:49 ET), <https://www.npr.org/2024/07/16/nx-s1-5041447/seine-water-quality-paris-olympics-swimming-triathlon-marathon> [<https://perma.cc/UMK7-AMRT>]; Alice Park, *How Dangerous Is the Seine for Olympic Athletes*, TIME (July 30, 2024, at 01:00 ET), <https://time.com/6999263/seine-health-risks-paris-olympics/> [<https://perma.cc/Y3FD-PD95>].

237. Park, *supra* note 236.

river.²³⁸ This was designed to capture runoff during heavy rain to prevent untreated wastewater from going into the Seine.²³⁹ Captured water would then gradually be treated, and clean water would return to the Seine.²⁴⁰

However, the unpredictable water quality did not stop Ivan Puskovitch's²⁴¹ commitment to compete in his first Olympics.²⁴² At only twenty-three years old, Ivan became the fifth American male in history to qualify for the Olympics in open-water swimming.²⁴³ Weeks before the Games began, Ivan Puskovitch, his family, and coaches expressed concerns about the water quality of the Seine, and the possibility of the open-water race moving indoors.²⁴⁴ High levels of bacteria, such as *E. coli*, had been detected as recently as two months before the competition, casting doubt over the Seine's safety.²⁴⁵ Ivan expressed his concerns that the event organizers "had so much time to get this thing cleaned up, and there's still no certainty" that the race will take place in the Seine.²⁴⁶ Yet, Ivan's commitment to compete in murky and likely unsafe waters, though remarkable, illustrates the lengths to which open-water swimmers go to reach their dreams—

238. *Id.*

239. *Id.*

240. *Id.*

241. Ivan was one of my teammates in club swimming at Germantown Academy. His grit and determination to excel in open-water swimming was evident even when we were just twelve years old.

242. Sielski, *supra* note 8.

243. Ivan Puskovitch, TEAM USA, <https://www.teamusa.com/profiles/ivan-puskovitch> [<https://perma.cc/89GV-TJB8>] (last visited Nov. 2, 2025).

244. See Sielski, *supra* note 8.

245. The Associated Press, *Unsafe E. Coli Levels Found in Paris' Seine River Less Than 2 Months Before Olympics*, NPR: EUROPE (June 15, 2024, at 01:22 ET), <https://www.npr.org/2024/06/15/g-s1-4613/unsafe-ecoli-paris-seine-river-olympics> [<https://perma.cc/D7B4-VF6V>]; Victor Goury-Laffont & Giovanna Coi, *Here's What the Data Shows on Seine Pollution Levels During the Olympics*, POLITICO (Aug. 9, 2024, at 18:01 CT), <https://www.politico.eu/article/france-seine-pollution-paris-olympics-data-triathlon-e-coli/> [<https://perma.cc/P4N3-QR57>]; see *Expert Comment – Why Open Water Swimming Could Leave You Unwell*, LONDON SCH. HYGIENE & TROPICAL MED. (Aug. 14, 2024), <https://www.lshmt.ac.uk/newsevents/news/2024/expert-comment-why-open-water-swimming-could-leave-you-unwell> [<https://perma.cc/26YU-PY8H>] (finding that when water is contaminated with waste, it poses risks that can cause mild to severe illness).

246. Sielski, *supra* note 8.

risking their lives in pursuit of representing their country and pushing themselves to the next level.²⁴⁷

While some competitors took precautions before competing, such as drinking probiotics like Yakult²⁴⁸ to protect their immune systems, not all were convinced of the Seine's safety.²⁴⁹ Jolien Vermeylen, a Belgian Olympian, expressed criticism of the officials' assurances after feeling debris in the river during her race, saying that "[t]he Seine has been dirty for a hundred years, so they can't say that the safety of the athletes is a priority."²⁵⁰ Some athletes reportedly drank Coca-Cola after races, hoping the soda would neutralize any harmful bacteria they contracted from the river water and "flush out anything inside of [them]."²⁵¹ Despite these measures, several athletes were forced to withdraw from competing after swimming in the Seine, including Claire Michel,²⁵² a Belgian triathlete who fell ill,

247. *See id.*

248. Yakult is a probiotic yogurt drink that aims to bolster one's health and reduce the risk of common illnesses. *See Sarah Kim, What Is Yakult? A Brief History of the Japanese Yogurt Drink that Became a Twitter Sensation*, MENTAL FLOSS (May 15, 2024), <https://www.mentalfloss.com/article/649777/yakult-history> [<https://perma.cc/MT3A-VAQE>]. Yakult has also been a FINA Official Partner since 2005. *See Partners*, WORLD AQUATICS, <https://www.worldaquatics.com/partners/yakult> [<https://perma.cc/7A7T-B7HL>] (last visited Nov. 3, 2025).

249. Leocciano Callao, *Olympic Swimmers Reveal Best 'Cure' to Fighting Infections After Plunging into the Polluted Seine River*, DAILY MAIL (Aug. 8, 2024, at 12:26 ET), <https://www.dailymail.co.uk/sport/olympics/article-13724303/olympics-swimmers-siene-river-infection-paris.html> [<https://perma.cc/DE8Z-LGHB>].

250. Nicholas McEntyre, *Olympics Triathlete Jolien Vermeylen Rips Officials After Swimming in Polluted Seine River: 'Felt and Saw Things That We Shouldn't Think About'*, N.Y. POST (Aug. 1, 2024, at 06:39 ET), <https://nypost.com/2024/08/01/sports/2024-paris-olympics-belgium-triathlete-jolien-vermeylen-slams-dirty-seine-river-after-race/> [<https://perma.cc/SKT2-BZN3>].

251. Swikar Oli, *After Swimming in the Seine, Some Olympians Reach For the Same Thing You Do at Home: A Cold Pop*, NAT'L POST (Aug. 10, 2024), <https://nationalpost.com/sports/olympics/after-swimming-in-the-seine-some-olympians-reach-for-the-same-thing-you-do-at-home-a-cold-pop> [<https://perma.cc/A23J-CM6F>]. Although this approach has no medical basis, the practice underscored the concerns among athletes over competing in the Seine's waters. *Id.*

252. Kate Brumback & Samuel Petrequin, *Belgium Withdraws from Mixed Relay Triathlon After Athlete Who Swam in Seine River Falls Ill*, NBC: CONN. (Aug. 4, 2024, at 15:27 ET), <https://www.nbcconnecticut.com/paris-2024-summer-olympics/belgium-withdraws-mixed-relay-triathlon-athlete-swam-seine-river-falls-ill/3353844/> [<https://perma.cc/7LCN-3V7X>].

and Adrien Brifford²⁵³ of Switzerland, who suffered a stomach infection.²⁵⁴

Ivan's courage was, at least in part, inspired by Fran Crippen.²⁵⁵ Though the two never met, Ivan grew up around Philadelphia, Pennsylvania, and Fran's legacy left an immense mark on him.²⁵⁶ While training at the U.S. Olympic and Paralympic Training Center in preparation for the 2024 Olympic games, Ivan wore a wristband that had the words "WORK THE DREAM," the motto of the Fran Crippen Elevation Foundation.²⁵⁷ Reflecting on Fran's influence, Ivan said, "Fran was this incredibly admired athlete and ambassador of the sport across all of Pennsylvania. In the country and the world, he's a symbol, and he's a symbol I think of regularly."²⁵⁸

Ivan's journey to the Olympics is a testament not only to his personal resilience but also to the unyielding spirit that defines open-water swimming.²⁵⁹ Competing at the Olympics at just twenty-three years old, Ivan is just a few years younger than Fran Crippen, who was twenty-six when he lost his life while competing.²⁶⁰ Ivan and Fran, both so young, represent a generation of athletes who are willing to push their limits mentally

253. Erich Richter, *Seine River Appears to Claim Another Olympian as Swiss Triathlete Has Stomach Infection*, N.Y. POST (Aug. 6, 2024, at 16:24 ET), <https://nypost.com/2024/08/06/sports/seine-river-appears-to-claim-another-olympian-with-stomach-infection/> [https://perma.cc/Z2YW-3PR4].

254. After failing several water quality tests from high levels of E. Coli in the Seine, the mixed relay was cancelled. See Yanyan Li, *David Johnston Withdraws from 10K Open Water, Ivan Puskovitch Will Be Only American Swimming*, SWIMSWAM (Aug. 3, 2024), <https://swimswam.com/david-johnston-withdraws-from-10k-open-water-ivan-pustovich-will-be-only-american-swimming/> [https://perma.cc/39SC-QETX].

255. See Sielski, *supra* note 8.

256. *Id.* In fact, Ivan (and I) trained at Germantown Academy together. Though Ivan never met Fran (and was never coached by him), Fran's presence was felt on GA's pool deck, as there is a mural on the wall by the timing system, Ivan was coached by Fran's friend and coach, Chris Lear, and Fran's black TYR kickboard hangs above the pool office.

257. *Id.*; see FCEF Mission, FRAN CRIPPEN, <https://www.francrippen.net/programs> [https://perma.cc/8C4V-9EVA] (last visited Nov. 3, 2025).

258. Sielski, *supra* note 8.

259. *Ivan Puskovitch*, OLYMPICS, https://olympics.com/en/paris-2024/athlete/ivan-puskovitch_1935972 [https://perma.cc/WF8K-5DRK] (last visited Nov 3, 2025).

260. *Id.*; *Fran Crippen Death: Likely Heat Stroke or Heart*, ABC NEWS (Oct. 25, 2010, at 20:25 ET), <https://abcnews.go.com/Health/Wellness/fran-crippen-death-heat-stroke-heart-problems/story?id=11967179> [https://perma.cc/3FP8-L8PF].

and physically, even in the face of grave risks.²⁶¹ Reflecting on Fran's impact, Ivan noted, "I feel like I've done justice by Fran's legacy—Fran never had that opportunity . . . There really is no way to overstate the impact he has on me."²⁶²

Competing in the Seine, despite over a century of filthy water conditions and health concerns, illustrates the lengths to which athletes will go to honor their dreams and the legacies of those who paved the way before them.²⁶³ As the only American male to compete in the Seine at the 2024 Paris Olympics, and who also placed nineteenth overall, Ivan embodies Fran Crippen's legacy and serves as a powerful reminder of the risks that athletes continue to face in the sport's most demanding and uncertain environments.²⁶⁴

V. COMPARISON TO IRONMAN TRIATHLON

The following section will examine how safety measures in the Ironman triathlon can inform and inspire improvements in safety regulations for open-water swimming. Specifically, this section will compare the safety protocols in Ironman triathlons, demonstrating how governing bodies in open-water swimming can take steps similar to Ironman to protect athletes rather than place the burden on competitors to self-regulate. This comparison will expose gaps in USA Swimming's current safety protocols and thereby provide a framework for new regulations to better protect athletes—particularly in preparation for the 2028 Los Angeles Olympic Games.

261. See John T. Wendt & John G. Miller, *Too Hot to Handle? Heat-Related Concerns for Tokyo Games*, SPORTS MED. & L., Spring 2020, at 7, <https://www.mmwr.com/wp-content/uploads/2020/05/SML-spring-2020.pdf> [<https://perma.cc/2KYG-UP9B>] (showing that "even the fittest swimmers may succumb to life-threatening heatstroke during physical exertion in open water swimming").

262. Sielski, *supra* note 8.

263. Park, *supra* note 236. The sport's regulations also set a minimum age of only fourteen to compete in the Olympics and World Aquatics events—a standard that may underestimate the maturity and risk required for such dangerous conditions. See COMPETITION REGULATIONS, *supra* note 36, at 109.

264. See Kyle Sagendorph, *Men's 10K Concludes Swimming Events at Paris 2024 Olympic Games*, USA SWIMMING (Aug. 9, 2024), <https://www.usaswimming.org/news/2024/08/09/men-s-10k-concludes-swimming-events-at-paris-2024-olympic-games> [<https://perma.cc/JGU9-WPB6>].

A. Ironman Background

Few events compare to the prestige and grueling nature of an Ironman Triathlon. What began as a fun endurance event—sparked by Judy and John Collins’ idea, where finishers could “brag for the rest of their life”—has now emerged into a global phenomenon.²⁶⁵ Inspired by the endurance races already taking place on the Hawaiian islands—the Waikiki Roughwater Swim (2.4 miles), the Around-Oahu Bike Race (112 miles), and the Honolulu Marathon (26.2 miles)—the Collins’ sought to create an endurance race that would be held annually in Hawai’i.²⁶⁶ Their vision became a reality on February 18th, 1978, when the first-ever Hawaiian Ironman Triathlon took place.²⁶⁷

The Ironman, a 140.6-mile race, quickly gained international attention.²⁶⁸ In 1980, ABC’s “Wide World of Sports” filmed the Ironman, exposing a global audience to the grit and determination required to finish the race.²⁶⁹ Two years later, Julie Moss, a college student, participated in her first ever Ironman.²⁷⁰ Yet just as she was about to win the title, she collapsed a few yards from the finish line.²⁷¹ Despite being passed for the title, Moss crawled to the finish line—and still became one of the most

265. *History: The Ironman Story*, IRONMAN [hereinafter *History of Ironman*], <https://www.ironman.com/about/history> [<https://perma.cc/N6EG-U7N8>] (last visited Nov. 3, 2025); Jennifer Velez, *Ironman Founders Judy and John Collins Have Long-Standing Coronado Connection*, CORONADO TIMES (Oct. 30, 2021), <https://coronadotimes.com/news/2021/10/30/ironman-founders-judy-and-john-collins-have-long-standing-coronado-connection/> [<https://perma.cc/4WS7-YGM5>].

266. *History of Ironman*, *supra* note 265; see also *The History of Ironman*, TEAM Z [hereinafter *Ironman Background*], <https://triteamz.com/im-mont-tremblant-cheer-guide/history-ironman/#:~:text=With%20a%20nod%20to%20a,completed%20in%2011%20hours%2C%2046> [<https://perma.cc/V5MP-DJUV>] (last visited Nov. 3, 2025).

267. *Ironman Background*, *supra* note 266.

268. See *History of Ironman*, *supra* note 265.

269. See Bob Babbitt, *The Last Time the Ironman World Championship Was Held Twice in a Year*, TRIATHLETE (Sep. 26, 2022), <https://www.triathlete.com/events/ironman/the-last-time-the-ironman-world-championship-was-held-twice-in-a-year/> [<https://perma.cc/8PSP-WQAU>]; Lawrie Mifflin, *TV Sports; Triathlon Thrives on ‘Wide World’*, N.Y. TIMES (Mar. 1, 1983), <https://www.nytimes.com/1983/03/01/sports/tv-sports-triathlon-thrives-on-wide-world.html> [<https://perma.cc/PG6V-45TW>].

270. See Babbitt, *supra* note 269.

271. Sarah Wassner Flynn, *Recalled: Julie Moss Gives Triathlon Its Breakthrough Moment*, TRIATHLETE (Mar. 14, 2024), <https://www.triathlete.com/culture/recalled-julie-moss-gives-triathlon-its-breakthrough-moment/> [<https://perma.cc/EM4Q-7S8S>].

iconic moments in sports history.²⁷² Moss solidified Ironman as more than just a race; Ironman was a proving ground for human resilience.²⁷³

By the late 1990s, Ironman expanded to embrace athletes of all abilities. John Maclean became the first athlete to finish an Ironman by powering a wheelchair.²⁷⁴ Ironman even inspired the addition of the triathlon at the 2000 Summer Olympics in Sydney.²⁷⁵ Today, Ironman has transformed from a single race in Hawai'i into a worldwide series spanning over more than fifty countries, with thousands of triathletes from around the world proving to others, and themselves, that "Anything is Possible."²⁷⁶

B. Ironman's Approach to Safety

While Ironman's reputation is built on endurance, its evolution has also included critical advancements in athlete safety.²⁷⁷ One key innovation is the adoption of the rolling swim start in the open-water swimming portion, a drastic departure from the traditional mass start used in many open-water events.²⁷⁸ Historically, Ironman races, like current USA Swimming and World Aquatics open-water events, began with mass starts, meaning hundreds (and at times thousands) of athletes charged

272. *Id.*

273. *Id.*

274. *How Far Can You Go?*, JOHN MACLEAN, <https://johnmaclean.com.au> [<https://perma.cc/62KP-UAKJ>] (last visited Nov. 3, 2025). John did not stop here. He took on many more sporting challenges. He became the first wheelchair athlete to swim in the English Channel, and he competed in multiple sports at the Paralympic Games. *Id.*

275. *Ironman Background*, *supra* note 266.

276. IRONMAN, <https://www.ironman.com/> [<https://perma.cc/6ZBH-UNDJ>] (last visited Nov. 3, 2025).

277. See Brittany Vermeer, *5 Causes of Open Water Swim Anxiety and How to Conquer Them*, IRONMAN (Jan. 16, 2025), <https://www.ironman.com/news/5-causes-open-water-swim-anxiety-and-how-conquer-them> [<https://perma.cc/PDE6-F378>] (providing athletes with ways to identify what causes anxiety in open-water swimming, and how to conquer it).

278. Susan Lacke, *Ironman Announces SwimSmart Initiative in North America*, TRIATHLETE (July 10, 2025) [hereinafter Lacke, *Ironman SwimSmart Initiative*], <https://www.triathlete.com/events/ironman-announces-swimstart-initiative-in-north-america/> [<https://perma.cc/FT2D-YFUG>]; *Ironman Alters Ironman World Championship Swim Start*, TRIATHLETE (July 10, 2025), <https://www.triathlete.com/events/ironman/ironman-alters-ironman-world-championship-swim-start> [<https://perma.cc/5WNN-YU8C>].

into the water at the same time.²⁷⁹ The mass start format created an intense and risky high-contact environment, often leading to swimmer-on-swimmer congestion, panic, and an increase in the risk of in-water incidents.²⁸⁰ These chaotic conditions were particularly dangerous for less experienced triathletes, whose panic responses or sudden physical distress could go unnoticed in the crowded field.²⁸¹

Recognizing the dangers that mass starts caused, Ironman implemented the SwimSmart initiative in 2013, replacing mass starts with self-seeded rolling starts.²⁸² Rolling starts allows competitors to now enter the water in a continuous, controlled flow, allowing swimmers to self-group based on their expected swim time.²⁸³ For context, this would allow three or four swimmers to enter the water every five seconds, compared to hundreds (and sometimes upwards of thousands) of swimmers starting simultaneously.²⁸⁴ Though this change was initially met with sharp criticism from some triathletes who felt the rolling start would weaken the race's traditional challenges, it has proven to be a major success.²⁸⁵ The transition has made races safer, while also improving the overall athlete experience.²⁸⁶ Data has also shown that swim times have even increased by

279. See Lacke, *Ironman SwimSmart Initiative*, *supra* note 278; see also *Ironman Texas – John Nelson*, SANTA BARBARA TRIATHLON CLUB (Apr. 22, 2017), <https://www.sbtriclub.com/ironman-texas-john-nelson/> [<https://perma.cc/DVX6-DG98>] (“The rolling swim start is a good way to get 2000 people into the water in a somewhat organized way.”); discussion *supra* Section I.B (examining the structure of an open water swim race).

280. See *Ironman Makes Swim Starts More Safe*, FITNESS FATALE (May 9, 2013), <https://fitness-fatale.com/blog/2013/05/09/ironman-makes-swim-starts-more-safe/> [<https://perma.cc/RC6A-NXSS>].

281. See *id.* (finding that modified swim starts “will help reduce pre-race anxiety and [the] fear of being hit, punched, kicked[,] or swam over during the race”).

282. *Swim Smart*, IRONMAN, <https://www.ironman.com/resources/smart-program/swim-smart> [<https://perma.cc/X4LQ-3L6C>] (last visited Nov. 3, 2025); *An Ironman SwimSmart Update*, TRIATHLETE (Oct. 24, 2013), <https://www.triathlete.com/culture/news/a-swimsmart-update/> [<https://perma.cc/J5QJ-V7M9>].

283. *An Ironman SwimSmart Update*, *supra* note 282.

284. *The Rolling Swim Start for Triathlon*, FOOT TRAFFIC (June 22, 2023), <https://foottraffic-coaching.com/articles/the-rolling-swim-start-for-triathlon> [<https://perma.cc/42FD-SNS3>].

285. *Id.*; see *Swim Smart*, *supra* note 282; Lacke, *Ironman SwimSmart Initiative*, *supra* note 278.

286. Ironman is committed to feedback from the athletes. See Susan Lacke, *The Rolling Start in 70.3: Love It or Hate It?*, TRIATHLETE (Apr. 6, 2017) [hereinafter Lacke, *The Rolling Start*], <https://www.triathlete.com/events/rolling-start-70-3-love-hate/> [<https://perma.cc/T2FN-ZF9P>].

upwards of 3% with the rolling start, likely due to the smoother pacing and reduced in-water conflict in contrast to mass starts.²⁸⁷

Additionally, athletes may use “course kayaks, boats, or any stationary floating rafts[] [and] docks” as resting points if they need to stop, just as long as they do not use them to push themselves forward during the swim.²⁸⁸ By allowing athletes to briefly hold onto these support mechanisms without facing the risk of disqualification, it provides a critical safety net, enabling athletes to recover if needed before continuing to race.²⁸⁹

C. How Fran Crippen Embodied Ironman’s Approach to Keeping Athletes Safe

Another key aspect of Ironman is its commitment to fostering a culture where athletes can assist in helping each other without fearing penalty.²⁹⁰ Ironman athletes are reminded that they are explicitly allowed, and even *encouraged*, to help fellow competitors in distress.²⁹¹ Under Ironman’s rules, athletes will not face any penalties or disqualifications for receiving medical evaluations, or helping fellow athletes in obtaining medical assistance.²⁹² In fact, the SwimSmart program emphasizes asking for help, instructing athletes to raise a hand if they or a fellow competitor need assistance to ensure that nearby lifeguards or safety boats are notified quickly.²⁹³ Additionally, athletes are allowed to share nutrition and other items; however, they are

287. See *An Ironman SwimSmart Update*, *supra* note 282; *Ironman SwimSmart Initiative = 3% to 4% Faster Average Swim Splits*, RUN TRI, <https://www.runtri.com/2013/06/ironman-swimsmart-initiative-3-to-4.html> [<https://perma.cc/GL4C-CEHU>] (last visited Nov. 3, 2025).

288. IRONMAN, 2024 COMPETITION RULES 14 (2024), https://cdn1.sportngin.com/attachments/document/6a42-3158538/2024_IRONMAN_Competition_Rules_-_English_Version_March_14_2024.pdf [<https://perma.cc/UZQ4-Z6Z8>].

289. *Id.*

290. *Id.* at 6–7; *Complete Guide to Ironman Race Week: Navigate Athlete Check-In Transition, and More*, IRONMAN (Dec. 30, 2024) [hereinafter *Complete Guide to Ironman Race Week*], <https://www.ironman.com/news/complete-guide-ironman-race-week-navigate-athlete-check-transition-and-more> [<https://perma.cc/B24U-LLU8>].

291. 2024 COMPETITION RULES, *supra* note 288, at 6.

292. *Complete Guide to Ironman Race Week*, *supra* note 290.

293. *Swim Smart*, *supra* note 282.

prohibited from sharing items essential to competition, such as bikes or helmets, as those would prevent the athlete from independently finishing the race.²⁹⁴

Ironman's commitment to each athlete mirrors Fran Crippen's *modus operandi* of ensuring every athlete went home without incident.²⁹⁵ Fran was not just an elite swimmer; he was an outspoken advocate for athlete protection globally, once saying that "not having proper representation is a very poor reflection upon USA Swimming."²⁹⁶ Fran's dedication to others was evident in both his advocacy and his actions.²⁹⁷ A clear example of this occurred in the summer of 2010 during a 10K race at the Pan Pacific Championship.²⁹⁸ Fran's teammate and roommate, Alex Meyer, had been battling a sickness on the days leading up to the race but remained determined to compete.²⁹⁹ Fran was already aware of Alex's condition, but it was during the race when Alex fell behind that Fran became deeply concerned.³⁰⁰ Rather than focusing solely on his race, Fran turned around mid-race to check on Alex to ensure he was not in immediate danger.³⁰¹ Fran stayed with Alex, drafting alongside him until it became clear that Alex was safe.³⁰² Despite this, Fran fought his way back to the front, finishing second, and Alex withdrew from the race.³⁰³ However, none of this comes as a surprise to those who knew Fran—he had a habit of waiting at the finish

294. *Complete Guide to Ironman Race Week*, *supra* note 290.

295. Warner & Kemmerling, *supra* note 11, at 28.

296. Associated Press, *Fran Crippen Complained About Support*, ESPN (Dec. 7, 2010, at 20:02 ET), <https://www.espn.com/olympics/swimming/news/story?id=5896859> [https://perma.cc/N4HT-PFVS].

297. *See id.*

298. *See* Bonnie D. Ford, *Alex Meyer Swimming with a Purpose*, ESPN (July 21, 2012, at 21:36 ET) [hereinafter Ford, *Alex Meyer Swimming with a Purpose*], https://www.espn.com/olympics/summer/2012/swimming/story/_/id/8187718/2012-summer-olympics-alex-meyer-swim-purpose-london [https://perma.cc/CQ6C-T6JT].

299. Feldman, *supra* note 171.

300. *Id.*

301. *Id.*

302. Ford, *Alex Meyer Swimming with a Purpose*, *supra* note 298.

303. Warner & Kemmerling, *supra* note 11, at 28; Feldman, *supra* note 171.

line of his races to make sure his competitors finished the race safely.³⁰⁴

The culture of athlete support and safety within Ironman is drastically different from USA Swimming's rules which focus primarily on penalizing physical contact and preventing unfair advantages, rather than on providing mechanisms for swimmer safety.³⁰⁵ Despite repeated calls for reform, regulatory bodies have done nothing.³⁰⁶ If open-water swimming is to truly evolve, legal intervention is necessary to mandate comprehensive safety measures—waiting for another tragedy is not an option.

VI. FRAMEWORK FOR REFORM

Protection of swimmers competing in open-water swimming events requires both (1) establishing race environments where athletes feel safe and are safe competing and (2) enforcing standards set by the governing bodies of open-water swimming to mitigate preventable risks. This Part proposes a two-step reform through the proposal of the Open-Water Swimming Safety Act, a federal law designed to impose stricter safety mandates and create independent oversight mechanisms in open-water swimming. The Act first requires USA Swimming to implement regional Open Water Swimming Associations at every sanctioned race location to provide local oversight and enforce safety protocols. Second, it mandates rule changes, including stricter maximum water temperature limits and starting guidelines, while also implementing a mandatory athlete tracking technology—such as a wearable GPS bracelet that monitors biometrics—to detect early signs of distress, locate

304. Warner & Kemmerling, *supra* note 11, at 28.

305. See 2010 RULEBOOK, *supra* note 188, at 143–44.

306. See, e.g., Bonnie D. Ford, *Calls For Swimming Reform Are Mounting*, ESPN (Nov. 18, 2010, at 16:11 ET), https://www.espn.com/olympics/swimming/columns/story?columnist=ford_bonnie_d&id=5821935 [<https://perma.cc/JFW7-TSF6>] (noting how open-water swimmers voiced concerns for their well-being via a petition that listed proposals to improve basic safety standards).

struggling athletes, and prevent avoidable tragedies like Fran Crippen's death.

A. The Need for Legislative Reform

With the 2028 Los Angeles Olympics quickly approaching, Congress has an opportunity to establish meaningful safety reforms in open-water swimming.³⁰⁷ The death of Fran Crippen in 2010, combined with multiple incidents of heat exhaustion, perilous racing conditions, and lack of oversight, highlights a clear failure in the existing regulations of open-water swimming.³⁰⁸ USA Swimming, the national governing body (NGB) for the sport, has not adequately protected its athletes from preventable harms and controllable dangers in open-water swimming.³⁰⁹

Congress has previously passed legislation to protect athletes, most notably through the Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020.³¹⁰ This Act strengthened oversight of the U.S. Olympic & Paralympic Committee (USOPC) and NGBs by giving Congress the power to dissolve the USOPC Board, to establish a duty of care that the USOPC and NGBs owe to amateur athletes, and to enhance protections for athletes through accountability and oversight.³¹¹ While legislative reform can be slow-moving, Congress has shown a

307. In April of 2025, the International Olympic Committee (IOC) approved a major expansion of Olympic swimming by adding 50-meter events in all strokes to the 2028 Olympic Swimming program. Perhaps this is a signal that the IOC, and the sport more broadly, is open to change. Thus, the 2028 Games may serve as a critical opportunity to enact long-overdue open-water safety reforms. See Torin Koos, *Fastest Swims on the Biggest Stage: LA28 Welcomes New 50m Events*, WORLD AQUATICS (Apr. 9, 2025, at 16:41 ET), <https://www.worldaquatics.com/news/4246119/swimming-olympics-sports-programme-new-events-50m-backstroke-breaststroke-butterfly-los-angeles-2028-la28-ioc-executive-board> [https://perma.cc/89B7-FMHL]; Nick McCarvel, *Swimming Adds 50m Breaststroke, Butterfly, and Backstroke to the Olympic Programme for LA 2028*, OLYMPICS (Apr. 9, 2025, at 14:15 ET), <https://www.olympics.com/en/news/swimming-adds-50m-breaststroke-butterfly-backstroke-olympic-programme-la-2028> [https://perma.cc/L5D7-2BR6].

308. See *supra* Part IV.

309. See *supra* Section II.B.

310. Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020, Pub. L. No. 116-189, 134 Stat. 943, 943.

311. See *id.* at 947–49.

willingness to act when athlete safety is at risk.³¹² Similar legislation is needed now to enforce safety standards in open-water swimming.³¹³

This Note proposes the Open-Water Swimming Safety Act, a federal act designed to (1) establish independent oversight through the creation of regional Open Water Swimming Associations, and (2) implement mandatory safety protocols through stricter water temperature regulations, revised starting guidelines, and GPS tracking, similar to the enforcement mechanisms established in the 2020 Empowering Olympic, Paralympic, and Amateur Athletes Act.³¹⁴

B. Creating Regional Open Water Swimming Associations

The Open-Water Swimming Safety Act will first require the creation of Regional Open Water Swimming Associations at every sanctioned race location. These associations will serve as independent oversight bodies to ensure that USA Swimming and event organizers comply with federally mandated safety protocols across all open-water swimming events.

Luckily, in terms of the 2028 Los Angeles Olympics, the groundwork for such a model already exists.³¹⁵ The Northern California Open Water Swimming Association (NCOWSA), a non-profit organization established in 2018, serves as a useful precedent and a successful regional safety model.³¹⁶ Based in San Francisco, NCOWSA provides leadership in open-water

312. See *id.* at 943. In February 2020, Congress demonstrated this willingness by holding a hearing on athlete safety, citing increased concussion rates, reports of cardiac arrest, and other medical conditions of student and professional athletes as a matter of grave concern in opening statements. See Athlete Safety and the Integrity of U.S. Sport: Hearing Before the S. Comm. on Com., Sci., & Transp., 116 Cong. 1 (2020) (statement of Sen. Roger Wicker, Chairman, S. Comm. on Com., Sci., & Transp.) (“The physical health and safety of athletes on the field or in sports arenas has also been a matter of concern. . . . Today we provide an opportunity for witnesses to share their insights about how to protect athletes across all age groups and skill levels from these types of incidents.”).

313. 134 Stat. at 943.

314. See *id.* at 964–65 (listing proposed enforcement mechanisms for the Act).

315. See Sylvia Lacock, *First Northern California and Lake Tahoe Open Water Swimming Associations Formed*, N. CAL. OPEN WATER SWIMMING ASS’N (July 4, 2018), <https://www.norcalopenwater.org/news/> [<https://perma.cc/5AVG-CY6T>].

316. *Id.*

swimming safety, as seven channel swimming alumni with significant open-water experience make up the board of the association.³¹⁷ NCOWSA also ratifies swims in Northern California and Lake Tahoe under the Lake Tahoe Open Water Swimming Association.³¹⁸

Unlike USA Swimming, which treats safety primarily as a rule compliance issue, NCOWSA implements real-time race monitoring and intervention protocols.³¹⁹ NCOWSA allows multiple observers to be present at each race, allowing for greater oversight and documentation of the swim.³²⁰ Observers have the authority to intervene at any stage of the competition to ensure compliance with safety and competition rules.³²¹ Additionally, NCOWSA's visibility and safety requirements go beyond what USA Swimming mandates, requiring swimmers to wear a minimum of two illuminated LED or chemical lights (one on the back of the head and one on their waist or back) to ensure that they remain visible throughout the race if visibility is low.³²² Thus, NCOWSA's emphasis on real-time oversight and proactive intervention starkly contrasts with USA Swimming's regulations, which treat safety as a matter of "how not to get disqualified" rather than actively ensuring swimmer safety in open-water races.³²³

With the 2028 Olympics still a few years away, there is time to implement Regional Open Water Swimming Associations at every sanctioned open-water event—but action must start now. By requiring the establishment of Regional Open Water Swimming Associations, the Open-Water Swimming Safety Act can create a new governance structure: one with a stricter reform

317. *Id.*

318. *Fees*, N. CAL. OPEN WATER SWIMMING ASS'N, <https://www.norcalopenwater.org/fees/> [https://perma.cc/RP7X-SKAR] (last visited Nov. 5, 2025).

319. *See* N. CAL. OPEN WATER SWIMMING ASS'N, MARATHON SWIMMING RULES AND REGULATIONS v.1.0.3, at 1–3 (2022), <https://www.tahoeopenwater.org/wp-content/uploads/2022/07/Marathon-Swimming-Rules-v1.0.3-Northern-California-Open-Water-Swimming-Assoc..pdf> [https://perma.cc/XVW4-G8DQ].

320. *See id.* at 1.

321. *Id.* at 2.

322. *Id.* at 3.

323. *Compare id.* at 1–3, with *supra* notes 95–100 and accompanying text.

towards safety to ensure that no swimmer is forced to choose between competition and survival. While establishing these Associations will take time, inaction is not an option. Despite the painful reality that an American athlete—Fran Crippen—lost his life in unsafe conditions abroad, the United States has the opportunity to lead by example. The 2028 Olympics must set a new global precedent that an athlete should never have to suffer due to inadequate safety measures in open-water swimming.

C. Changes to USA Swimming's Rules

Even if Regional Open Water Swimming Associations are established, USA Swimming's open-water swimming rules still fall short of ensuring athlete safety. To truly protect athletes, the Open-Water Swimming Safety Act establishes federally mandated safety reforms, requiring USA Swimming to revise its own rules to comply with stricter safety standards across all sanctioned open-water races. This section proposes three essential changes to USA Swimming's own rules: (1) implementing a lower maximum water temperature limit, (2) revising starting procedures, and (3) requiring GPS and biometric tracking for real-time athlete monitoring.

1. Stricter maximum water temperature limits

The Open-Water Swimming Safety Act mandates a stricter maximum water temperature limit of 27° Celsius (80.6° Fahrenheit) to prevent dangerous health risks associated with competing in extreme heat. As demonstrated with Fran Crippen, Christine Jennings, the 2011 World Cup, and the 2019 ANOC Championships, swimming in excessive heat can lead to dehydration, exhaustion, heat stroke, and overall racing conditions that hinder athletic safety and performance.³²⁴ These water temperatures place athletes in avoidable dangerous situations,

324. See *supra* Part IV, discussion of open-water swimming incidents.

whereby a firmer maximum temperature limit can prevent heat-related illness.³²⁵

To comply with this federal standard, USA Swimming must change its maximum temperature limit from 29.45° Celsius to 27 degrees Celsius (80.6° Fahrenheit).³²⁶ Lowering the limit provides a critical safeguard against heat-induced medical emergencies, particularly in long-distance open-water swimming events where athletes race for hours on end with limited opportunities to cool down.³²⁷ Water temperature remains the “biggest risk factor[]” during open-water races, and this risk can be addressed directly by implementing stricter water temperature standards, ensuring that races are conducted in conditions that prioritize athlete safety rather than pushing them to the point of physical collapse.³²⁸

2. *Implementation of rolling starts*

The Open-Water Swimming Safety Act mandates a safer, more controlled starting system to reduce the perilous risks mass starts create.³²⁹ To comply with this standard, USA Swimming should implement a rolling start for races with more than fifty athletes—modeled after Ironman’s SwimSmart program, which has proven to improve athlete safety without compromising competition.³³⁰ While USA Swimming currently permits “wave” starts in some open-water races, the decision for

325. See *supra* Part IV.

326. 2025 RULEBOOK, *supra* note 50, at 119. This is a temperature change from 85.01 degrees Fahrenheit to 80.6 degrees Fahrenheit. *Id.*

327. See James Sutherland, *World Triathlon Implementing Changes to Make Swim Safer – For Pros*, SWIMSWAM (Feb. 6, 2025), <https://swimswam.com/world-triathlon-implementing-changes-to-make-swim-safer-for-pros/> [<https://perma.cc/299Y-9WSN>] (“The biggest risk factors in swim tend to be the water temperature and weather.”); G. John Mullen, *How Hot Is Too Hot in Open Swimming?*, SWIMMING WORLD (Mar. 16, 2015, at 18:00 ET), <https://www.swimming-worldmagazine.com/news/hot-hot-open-water-swimming/> [<https://perma.cc/G5UD-CTY3>] (discussing medical emergencies associated with water temperature in open-water swimming).

328. Sutherland, *supra* note 327.

329. See *Ironman Makes Swim Starts More Safe*, *supra* note 280.

330. *The Effect of the Ironman SwimSmart Starts*, COACHCOX, <https://www.coachcox.co.uk/2013/05/10/the-effect-of-the-ironman-swimsmart-starts/> [<https://perma.cc/NW2H-N67L>] (last visited Nov. 5, 2025); Lacke, *The Rolling Start*, *supra* note 286.

“waves” lies with the “referee.”³³¹ Yet, within each wave, all athletes still enter the water simultaneously, retaining the same crowding and physical collisions associated with traditional mass starts.³³²

In contrast, Ironman’s rolling start allows athletes to enter the water a few at a time at short intervals, creating a safer and more controlled racing environment.³³³ Some may argue that Ironman is designed for athletes with wide ranges of abilities, whereas open-water swimming races feature elite swimmers who are better equipped (and perhaps accustomed) to handle mass starts; however, even elite athletes still face serious risks from overcrowded starts.³³⁴ While some athletes may criticize a mandate requiring rolling starts for undermining the sport’s intensity and tradition, the shift is justified, as no tradition should come at the expense of basic athlete safety. By requiring USA Swimming to adopt rolling starts for large open-water races, the Open-Water Swimming Safety Act would set the tone for a race where individual athlete safety takes precedence over tradition from the moment a race begins.

3. *Requirement of real-time GPS and biometric tracking bracelets*

The Open-Water Swimming Safety Act would mandate the use of real-time GPS and biometric tracking bracelets at all sanctioned open-water races to prevent avoidable emergencies. To comply, USA Swimming must require all competitors to wear the FES SwimSensor, a GPS-enabled biometric tracking device that monitors both location and swimming strokes data throughout a swimmer’s race.³³⁵

331. 2025 RULEBOOK, *supra* note 50, at 20, 115.

332. *Id.* at 20.

333. See *The Rolling Swim Start for Triathlon*, *supra* note 284.

334. See Bonnie D. Ford, *Trouble Beneath the Surface*, ESPN (Oct. 18, 2013), https://www.espn.com/espn/feature/story/_/id/9838319/trouble-surface [<https://perma.cc/FZ3J-RX7J>].

335. *SwimBETTER*, EO, <https://www.eolab.com/swimbetter> [<https://perma.cc/5DWG-7QGB>] (last visited Nov. 15, 2025); WORLD AQUATICS, OPEN WATER SWIMMING: CURRENT LIST OF APPROVED WEARABLES (2024),

Currently, World Aquatics permits, but does not require, the use of some GPS tracking and biometric wearables.³³⁶ It is up to the swimmer if they want to use any of the approved devices, and it is their responsibility to declare any product they use before the start of their race.³³⁷ USA Swimming has an opportunity to lead by example and build off of World Aquatics' "approved wearables" by mandating a uniform, proactive safety protocol that leverages wearable technology such as a bracelet-like GPS and biometric tracker to prevent avoidable tragedies in open-water swimming.³³⁸ The live data reported from the FES SwimSensor would be transmitted to designated race officials, who would monitor it and be prepared to respond immediately if an athlete shows signs of distress, veers off course, or remains stationary for too long.

By requiring this wearable technology, USA Swimming will shift from a *reactive* approach to a *proactive* safety model, ensuring that no swimmer goes unnoticed in an open-water race again. USA Swimming will show that safety in open-water competitions will no longer be left to chance, but rather will be enforced through technology.³³⁹

<https://resources.fina.org/fina/document/2024/02/19/97dfa697-a27d-4427-b67d-14f88d92bbc6/2024.02.19-List-of-Approved-Wearables-OPEN-WATER-SWIMMING.pdf> [<https://perma.cc/V96M-U6H5>]; see also Ken Ono & Will Tenpas, *The Science Behind Paige Madden's Olympic Breakthrough in Paris*, SWIMSWAM (Nov. 29, 2024), <https://swimswam.com/the-science-behind-paige-maddens-olympic-breakthrough-in-paris/> [<https://perma.cc/742A-WN88>] (highlighting benefits of swimming wearables); Joe Lemire, *How EO's SwimBETTER Wearable Could Prove to Be Game-Changing for the Sport of Swimming*, SPORTS BUS. J. (May 31, 2022), <https://www.sportsbusinessjournal.com/Daily/Issues/2022/06/01/Technology/how-eos-swim-better-wearable-could-prove-to-be-game-changing-for-the-sport-of-swimming/> [<https://perma.cc/E427-Q43U>] (same).

336. See WORLD AQUATICS, *supra* note 335.

337. See *id.*; WORLD AQUATICS, *supra* note 59, at 25.

338. See Katherine Douglass, Augustus Lamb, Jerry Lu, Ken Ono & William Tenpas, *Swimming in Data*, 46 MATH INTELLIGENCER 145, 154 (2024) ("These leaps in technology will result in equally magnificent leaps in performance, with athletic feats that would have been quite literally unimaginable 100 years earlier.").

339. See *id.* at 147 ("For 2024 Olympic hopefuls, the advent of sensor technology has turned this idea into a reality in which mathematics and physics produce actionable items that can help athletes as they strive to reach the limit of their potential.").

CONCLUSION

World-class open-water swimmers will compete no matter the conditions—pushing their bodies physically and mentally to their limits is in their nature. But should they not be able to trust that proper safety measures are in place to do so? Instead, governing bodies like World Aquatics and USA Swimming have neglected to offer their athletes basic protections, forcing them to risk their lives for organizations that fail to safeguard them. Fran Crippen's death was not an anomaly—it was a foreseeable consequence of a system that prioritizes competition over athlete welfare.

With the Olympics returning to the United States for the first time in over three decades, and for the first time ever for open-water swimming, now is the time for real change. The change begins with establishing the Open-Water Swimming Safety Act. This Act does not offer mere recommendations; it establishes legally enforceable safety standards to protect swimmers from preventable dangers of open-water swimming. It ensures no swimmer is left unprotected, unseen, or alone in the water.

Fran Crippen was known for waiting at the finish line until every swimmer completed their race. Yet, when he slipped beneath the surface during his 10K, no one was there to wait for him. The Open-Water Swimming Safety Act would ensure that never happens again.